

A Pennsylvania district court, against the decision in *Encompass*, would likely uphold the pre-service removal motion by the Pennsylvania defendant. On the current facts, there is no evidence to support the contention that the plaintiff named the Pennsylvania defendant fraudulently, and thus, there does not exist a policy-based reason to preclude pre-service removal. And because the Pennsylvania defendant had never been properly joined and served, the district court would conclude, under the plain language rule, that the forum-defendant rule does not apply. Consequently, the court would, in all probability, uphold the Pennsylvania defendant's motion for pre-service removal.

### **Conclusion**

When diversity jurisdiction exists and a plaintiff files a case in a state court other than that of the defendant's home, the defendant can file for removal to federal court to avoid local biases. When the plaintiff files such a case in the defendant's home state court, however, the defendant cannot remove it to federal court because he is presumed to be at no risk of prejudice from his home community—this is known as the forum-defendant rule and it applies only when the defendant has been properly served. Were a named forum defendant to become cognizant of an impending suit against him in his local state court prior to service, he may motion for the case to be removed to federal court through a process known as pre-service removal.

On the stipulated facts of the present case, a district court in Pennsylvania will, in all likelihood, uphold the Pennsylvania defendant's motion for pre-service removal. The district court would base its decision on a recent Third Circuit ruling that established that the forum-defendant rule is to be interpreted under its plain meaning. *See Encompass*, 902 F.3d. Under such an interpretation of the forum-defendant rule, the Pennsylvania defendant was never properly joined and served, and thus is lawfully permitted to remove the case to federal court.

**Applicant Details**

First Name **Jasmin**  
 Middle Initial **S**  
 Last Name **Fashami**  
 Citizenship Status **U. S. Citizen**  
 Email Address [jfashami@nd.edu](mailto:jfashami@nd.edu)  
 Address

**Address****Street****26033 Cape Drive, Unit 553****City****Laguna Niguel****State/Territory****California****Zip****92677****Country****United States**

Contact Phone Number **9496808493**

**Applicant Education**

BA/BS From **California Polytechnic State University, San Luis Obispo**  
 Date of BA/BS **June 2019**  
 JD/LLB From **Notre Dame Law School**  
<http://law.nd.edu>  
 Date of JD/LLB **May 20, 2022**  
 Class Rank **School does not rank**  
 Does the law school have a Law Review/Journal? **Yes**  
 Law Review/Journal **No**  
 Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/Externships **No**

Post-graduate Judicial Law Clerk **No**

## Specialized Work Experience

## Recommenders

Blakey, Hon. John Robert  
jack\_blakey@yahoo.com  
574-631-8737  
Coffee, Michael  
michael.s.coffee@usdoj.gov  
202-616-1916  
Gurule, Jimmy  
Jimmy.Gurule.1@nd.edu  
574-631-5917

## References

Michael S. Coffee  
Trial Counsel; Externship Supervisor  
U.S. Department of Justice  
Civil Division, Office of Foreign Litigation  
Phone: 202-616-1916  
Email: michael.s.coffee@usdoj.gov

Jimmy Gurulé  
Professor of Law  
Notre Dame Law School  
Phone: 574-631-5917  
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The Honorable John Robert Blakey  
Professor of Law  
Judge for the U.S. District Court for the Northern District of Illinois  
Phone: 312-435-6058  
Email: john\_blakey@ilnd.uscourts.gov

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Jasmin S. Fashami**  
26033 Cape Drive, Unit 553, Laguna Niguel, CA 92677  
949-680-8493 | jfashami@nd.edu

June 14, 2021

The Honorable Elizabeth W. Hanes  
U.S. District Court for the Eastern District of Virginia  
Spottswood W. Robinson III and Robert R. Merhige, Jr. U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am a rising third-year student at Notre Dame Law School, and I am writing to apply for a clerkship in your chambers for the 2022-24 term. As a student dedicated to pursuing a public service career, I am particularly interested in clerking in your chambers.

Throughout my time in law school, I have had extensive legal research and writing experience. As a former Civil Division and current Criminal Division law clerk for the U.S. Department of Justice, I have drafted legal memoranda on myriad federal issues. As an intern for legal aid clinic Indiana Legal Services, I also drafted motions and proposed orders. This past year, I have taken a multitude of paper-based classes to further refine my research and writing abilities. I believe these experiences have prepared me to contribute meaningfully to your chambers.

Enclosed please find my resume, law school transcript, and writing sample. Letters of recommendation from the following people will be sent under separate cover:

|                       |                         |                            |
|-----------------------|-------------------------|----------------------------|
| Prof. Jimmy Gurulé    | Hon. John Robert Blakey | Mr. Michael Coffee         |
| Notre Dame Law School | Notre Dame Law School   | U.S. Department of Justice |

Please accept these materials as an indication of my genuine desire to assist you as a judicial clerk. If there is any other information that would be helpful to you, please let me know. Thank you for your time and consideration.

Respectfully,

Jasmin Fashami

**Jasmin S. Fashami**

949-680-8493 • jfashami@nd.edu • 26033 Cape Drive, Unit 553, Laguna Niguel, CA 92677

**EDUCATION****University of Notre Dame Law School**, Notre Dame, Indiana*Juris Doctor Candidate, August 2019 – May 2022*

GPA: 3.419

- ACTIVITIES: Participant – London Law Program (Spring 2022); Co-Alumni Ambassador – Washington, D.C.; Member – ND Women in International Security, Future Prosecuting Attorneys Council
- PROJECTS: “Beneficial Ownership Disclosure, Bank Complicity, and Cryptocurrency: Does the Anti-Money Laundering Act of 2020 Close the Gaps in the United States’ AML Regime?” (Spring 2021)  
 “Dirty Bombs and Ceramic Firearms: Can the Government Exercise Prior Restraint and Enjoin a Defendant from Publishing Plans for Dangerous Weapons on the Internet?” (Spring 2021)  
 “State-Sponsored Cyberwarfare Operations and the Existing International Legal Framework: Can Cyberattacks Be Characterized as ‘Uses of Force’ And Violations of International Law?” (Fall 2020)

**California Polytechnic State University**, San Luis Obispo, California*Bachelor of Arts in Political Science, Minor in Ethics, Public Policy, Science & Technology, September 2016 - June 2019*

GPA: 3.40

- PUBLICATIONS: “Denying Service to 9-1-1 Users: Mitigating & Preventing Distributed Denial-of-Service Attacks Against Public Safety Answering Points” California Cybersecurity Institute (forthcoming)
- PROJECTS: “An Ethical and Constitutional Analysis of the Use of Facial Recognition Systems by Law Enforcement Agencies” Senior Thesis (June 2019)  
 1st Place, California Secretary of State Voter Registration Ballot Bowl (November 2018)  
 Co-authored AB-2385 – Signed into law by former California Governor Jerry Brown (August 2018)

**EXPERIENCE****U.S. Department of Justice, Money Laundering and Asset Recovery Section**, Washington, D.C. (remote)*Law Clerk, May 2021 – Current***U.S. Department of Justice, Office of Foreign Litigation**, Washington, D.C. (remote)*Law Clerk, January 2021 – May 2021*

- Researched and wrote legal memoranda on public and private international law issues, including the Foreign Sovereign Immunities Act, Hague Evidence and Service Conventions, and various treaties and blocking statutes
- Drafted and reviewed arguments for an amicus brief in federal appellate court and a foreign case in Senegal
- Translated numerous Iranian court documents and legal complaints from Farsi to English

**Indiana Legal Services, Inc.**, South Bend, Indiana (remote)*Legal Extern, August 2020 – November 2020*

- Researched state codes & drafted motions for indigent clients on Social Security, housing, and expungement cases

**U.S. Senate Judiciary Committee**, Washington, D.C. (remote)*Law Clerk in the Office of Ranking Member Dianne Feinstein, May 2020 – July 2020*

- Researched and drafted memoranda on a range of Committee issues, including FISA reauthorization and Fourth Amendment guarantees, judicial nominations, Section 1983 actions, and Crossfire Hurricane oversight hearings

**Associated Students, Inc.**, San Luis Obispo, California*President, June 2018 – June 2019*

- Served as a corporate officer for a 501(c)(3) non-profit auxiliary corporation; Oversaw an \$18 million annual operating budget; Lobbied for higher education policies with members of Congress and California Legislature

**Hobson Bernardino + Davis LLP**, Los Angeles, California (remote)*Legal Research Intern for Kenneth Melrose, October 2017 – January 2018*

- Drafted parts of a 200+ page complaint for a case related to deceptive advertising and products liability

**The Lex Fellowship**, Madrid, Spain*Legal Fellow, June 2017 – July 2017*

- Met with various law firms to learn about international law with an emphasis on international trade and IP issues

**LANGUAGES****Farsi (Persian)** – Native Proficiency; **Russian** – Elementary Proficiency; **Dutch** – Elementary Proficiency**INTERESTS**

Collecting vintage vinyl records; Learning new languages; Trying unique cuisines

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## UNIVERSITY OF NOTRE DAME

NOTRE DAME, INDIANA 46556

Fashami, Jasmin S.  
Student ID: XXXXX1422

Date Issued: 12-JUN-2021  
Page: 1

Birth Date: 11-27-XXXX

Issued To: To Whom It May Concern  
Parchment DocumentID: 34769519  
jflashami@nd.edu

Course Level: Law  
Program: Juris Doctor  
College: Law School  
Major: Law

|                                  |       |                 |            |     | UND SEMESTER TOTALS |               |               |            | OVERALL TOTALS |               |               |            |       |
|----------------------------------|-------|-----------------|------------|-----|---------------------|---------------|---------------|------------|----------------|---------------|---------------|------------|-------|
| CRSE                             | ID    | COURSE TITLE    | CRS<br>HRS | GRD | QPTS                | ATTEMP<br>HRS | EARNED<br>HRS | GPA<br>HRS | GPA            | ATTEMP<br>HRS | EARNED<br>HRS | GPA<br>HRS | GPA   |
| UNIVERSITY OF NOTRE DAME CREDIT: |       |                 |            |     |                     |               |               |            |                |               |               |            |       |
| Fall Semester 2019               |       |                 |            |     |                     |               |               |            |                |               |               |            |       |
| Law School                       |       |                 |            |     |                     |               |               |            |                |               |               |            |       |
| LAW                              | 60105 | Contracts       | 4.000      | B+  | 13.332              |               |               |            |                |               |               |            |       |
| LAW                              | 60308 | Civil Procedure | 4.000      | A-  | 14.668              |               |               |            |                |               |               |            |       |
| LAW                              | 60703 | Legal Research  | 1.000      | B   | 3.000               |               |               |            |                |               |               |            |       |
| LAW                              | 60705 | Legal Writing I | 2.000      | B   | 6.000               |               |               |            |                |               |               |            |       |
| LAW                              | 60901 | Torts           | 4.000      | B   | 12.000              |               |               |            |                |               |               |            |       |
| -                                |       | Total           |            |     | 49.000              | 15.000        | 15.000        | 15.000     | 3.267          | 15.000        | 15.000        | 15.000     | 3.267 |

## Spring Semester 2020

During the Spring 2020 semester, a global health emergency required significant changes to coursework. Unusual enrollment patterns and grades reflect the tumult of the time.

|            |                               |       |    |       |        |        |       |       |        |        |        |       |
|------------|-------------------------------|-------|----|-------|--------|--------|-------|-------|--------|--------|--------|-------|
| Law School |                               |       |    |       |        |        |       |       |        |        |        |       |
| LAW 60302  | Criminal Law                  | 4.000 | P  | 0.000 |        |        |       |       |        |        |        |       |
| LAW 60307  | Constitutional Law            | 4.000 | P  | 0.000 |        |        |       |       |        |        |        |       |
| LAW 60707  | Legal Resrch & Writing II-MC  | 1.000 | B+ | 3.333 |        |        |       |       |        |        |        |       |
| LAW 60906  | Property                      | 4.000 | P  | 0.000 |        |        |       |       |        |        |        |       |
| LAW 70452  | Con Crim Proc: Investigations | 3.000 | P  | 0.000 |        |        |       |       |        |        |        |       |
| LAW 75700  | Galilee                       | 1.000 | S  | 0.000 |        |        |       |       |        |        |        |       |
| -          | Total                         |       |    | 3.333 | 17.000 | 17.000 | 1.000 | 3.333 | 32.000 | 32.000 | 16.000 | 3.271 |

CONTINUED ON PAGE 2

## UNIVERSITY OF NOTRE DAME

NOTRE DAME, INDIANA 46556

Fashami, Jasmin S.  
 Student ID: XXXXX1422  
 Birth Date: 11-27-XXXX

Date Issued: 12-JUN-2021  
 Page: 2

| CRSE  | ID       | COURSE TITLE                                  | CRS<br>HRS | GRD         | QPTS   | UND SEMESTER TOTALS |               |            |       | OVERALL TOTALS |               |            |       |
|---|----------|---|------------|-------------|--------|---------------------|---------------|------------|-------|----------------|---------------|------------|-------|
|   |          |   |            |             |        | ATTEMP<br>HRS       | EARNED<br>HRS | GPA<br>HRS | GPA   | ATTEMP<br>HRS  | EARNED<br>HRS | GPA<br>HRS | GPA   |
| University of Notre Dame Information continued: |          |   |            |             |        |                     |               |            |       |                |               |            |       |
| Fall Semester 2020                              |          |   |            |             |        |                     |               |            |       |                |               |            |       |
| Law School                                      |          |   |            |             |        |                     |               |            |       |                |               |            |       |
| LAW   | 70324    | National Security Law                         | 3.000      | A-          | 11.001 |                     |               |            |       |                |               |            |       |
| LAW   | 70365    | Federal Criminal Practice                     | 3.000      | A-          | 11.001 |                     |               |            |       |                |               |            |       |
| LAW   | 70736    | Lawyering Practice Instruction                | 1.000      | S           | 0.000  |                     |               |            |       |                |               |            |       |
| LAW   | 70807    | Professional Responsibility                   | 3.000      | B+          | 9.999  |                     |               |            |       |                |               |            |       |
| LAW   | 73136    | Cybersecurity and Data<br>Protection Practice | 2.000      | B+          | 6.666  |                     |               |            |       |                |               |            |       |
| LAW   | 75736    | Lawyering Externship Fieldwork                | 2.000      | S           | 0.000  |                     |               |            |       |                |               |            |       |
| Total   |          |   |            |             | 38.667 | 14.000              | 14.000        | 11.000     | 3.515 | 46.000         | 46.000        | 27.000     | 3.370 |
| Spring Semester 2021                            |          |   |            |             |        |                     |               |            |       |                |               |            |       |
| Law School                                      |          |   |            |             |        |                     |               |            |       |                |               |            |       |
| LAW   | 73761    | LW ND Law in DC Seminar                       | 2.000      | A           | 8.000  |                     |               |            |       |                |               |            |       |
| LAW   | 73830    | Military Justice System Sem                   | 2.000      | B+          | 6.666  |                     |               |            |       |                |               |            |       |
| LAW   | 73903    | Media and The Law                             | 2.000      | B+          | 6.666  |                     |               |            |       |                |               |            |       |
| LAW   | 75761    | LW ND Law in DC Field Pl/Ext                  | 8.000      | S           | 0.000  |                     |               |            |       |                |               |            |       |
| LAW   | 76101    | Directed Readings                             | 2.000      | A-          | 7.334  |                     |               |            |       |                |               |            |       |
| Total   |          |   |            |             | 28.666 | 16.000              | 16.000        | 8.000      | 3.583 | 62.000         | 62.000        | 35.000     | 3.419 |
| Fall Semester 2021                              |          |   |            |             |        |                     |               |            |       |                |               |            |       |
| IN PROGRESS WORK                                |          |   |            |             |        |                     |               |            |       |                |               |            |       |
| LAW   | 70114    | M Banking Law & Fin Institutions              | 2.000      | IN PROGRESS |        |                     |               |            |       |                |               |            |       |
| LAW   | 70115    | M Real Estate Colloq (Fin & Law)              | 2.000      | IN PROGRESS |        |                     |               |            |       |                |               |            |       |
| LAW   | 70201    | M Evidence                                    | 3.000      | IN PROGRESS |        |                     |               |            |       |                |               |            |       |
| LAW   | 70312    | M Suing the Federal Government                | 3.000      | IN PROGRESS |        |                     |               |            |       |                |               |            |       |
| LAW   | 70315    | M Administrative Law                          | 3.000      | IN PROGRESS |        |                     |               |            |       |                |               |            |       |
| LAW   | 70403    | M International Criminal Law                  | 3.000      | IN PROGRESS |        |                     |               |            |       |                |               |            |       |
| In Progress Credits                             |          |   | 16.000     |             |        |                     |               |            |       |                |               |            |       |
| ***** TRANSCRIPT TOTALS *****                   |          |   |            |             |        |                     |               |            |       |                |               |            |       |
| NOTRE DAME                                      | Ehrs:    | 62.000  | QPts:      | 119.666     |        |                     |               |            |       |                |               |            |       |
|   | GPA-Hrs: | 35.000  | GPA:       | 3.419       |        |                     |               |            |       |                |               |            |       |
| TRANSFER  | Ehrs:    | 0.000   | QPts:      | 0.000       |        |                     |               |            |       |                |               |            |       |
|   | GPA-Hrs: | 0.000   | GPA:       | 0.000       |        |                     |               |            |       |                |               |            |       |
| OVERALL   | Ehrs:    | 62.000  | QPts:      | 119.666     |        |                     |               |            |       |                |               |            |       |
|   | GPA-Hrs: | 35.000  | GPA:       | 3.419       |        |                     |               |            |       |                |               |            |       |
| ***** END OF TRANSCRIPT *****                   |          |   |            |             |        |                     |               |            |       |                |               |            |       |



## CAMPUS CODES

All courses taught at an off campus location will have a campus code listed before the course title.

The most frequently used codes are:

|    |                               |
|----|-------------------------------|
| AF | Angers, France                |
| DC | Washington, DC                |
| FA | Fremantle, Australia          |
| IA | Innsbruck, Austria            |
| IR | Dublin, Ireland               |
| LA | London, England (Fall/Spring) |
| LE | London, England (Law-JD)      |
| LG | London, England (Summer EG)   |
| LS | London, England (Summer AL)   |
| PA | Perth, Australia              |
| PM | Puebla, Mexico                |
| RE | Rome, Italy                   |
| RI | Rome, Italy (Architecture)    |
| SC | Santiago, Chile               |
| SP | Toledo, Spain                 |

For a complete list of codes, please see the following website:  
<http://registrar.nd.edu/pdf/campuscodes.pdf>

## GRADING SYSTEM - SEMESTER CALENDAR

Previous grading systems as well as complete explanations are available at the following website:

<http://registrar.nd.edu/students/gradefinal.php>

## August 1988 - Present

| Letter Grade | Point Value | Legend   |
|--------------|-------------|--|
| A            | 4           |  |
| A-           | 3.667       |  |
| B+           | 3.333       |  |
| B            | 3           |  |
| B-           | 2.667       |  |
| C+           | 2.333       |  |
| C            | 2           | Lowest passing grade for graduate students.  |
| C-           | 1.667       |  |
| D            | 1           | Lowest passing grade for undergraduate students.   |
| F            | 0           | Failure  |
| F*           | 0           | No final grade reported for an individual student (Registrar assigned).  |
| X            | 0           | Given with the approval of the student's dean in extenuating circumstances beyond the control of the student. It reverts to "F" if not changed within 30 days after the beginning of the next semester in which the student is enrolled. |

|   |   |   |
|---|---|---|
| I | 0 | Incomplete (reserved for advanced students in advanced studies courses only). It is a temporary and unacceptable grade indicating a failure to complete work in a course. The course work must be completed and the "I" changed according to the appropriate Academic Code. |
| U |   | Unsatisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses).   |

## Grades which are not Included in the Computation of the Average

|    |   |
|----|---|
| S  | Satisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses). |
| V  | Auditor (Graduate students only).   |
| W  | Discontinued with permission. To secure a "W" the student must have the authorization of the dean.  |
| P  | Pass in a course taken on a pass-fail basis.  |
| NR | Not reported. Final grade(s) not reported by the instructor due to extenuating circumstances.   |
| NC | No credit in a course taken on a pass-no credit basis.  |

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: <http://registrar.nd.edu/students/gradefinal.php>

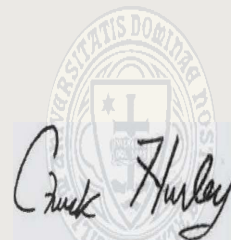
## THE LAW SCHOOL GRADING SYSTEM

The current grading system for the law school is as follows: A (4.000), A- (3.667), B+ (3.333), B (3.000), B- (2.667), C+ (2.333), C (2.000), C- (1.667), D (1.000), F or U (0.000).

Effective academic year 2011-2012, the law school implemented a grade normalization policy, with mandatory mean ranges (for any course with 10 or more students) and mandatory distribution ranges (for any course with 25 or more students). For Legal Writing (I & II) only, the mean requirement will apply but the distribution requirement will not apply. The mean ranges are as follows: for all first-year courses (except for the first-year elective, which is treated as an upper-level course), the mean is 3.25 to 3.30; for large upper-level courses (25 or more students), the mean is 3.25 to 3.35; for small upper-level courses (10-24 students), the mean is 3.15 to 3.45.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: <http://registrar.nd.edu/students/gradefinal.php>

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CHUCK HURLEY, UNIVERSITY REGISTRAR

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## COURSE NUMBERING SYSTEM

Previous course numbering systems (prior to Summer 2005) are available at the following website:

[http://registrar.nd.edu/faculty/course\\_numbering.php](http://registrar.nd.edu/faculty/course_numbering.php)

Beginning in Summer 2005, all courses offered are five numeric digits long (e.g. ENGL 43715).

The first digit of the course number indicates the level of the course.

|                |   |
|----------------|---|
| ENGL 0 X - XXX | = Pre-College course                              |
| ENGL 1 X - XXX | = Freshman Level course                           |
| ENGL 2 X - XXX | = Sophomore Level course                          |
| ENGL 3 X - XXX | = Junior Level course                             |
| ENGL 4 X - XXX | = Senior Level course                             |
| ENGL 5 X - XXX | = 5th Year Senior / Advanced Undergraduate Course |
| ENGL 6 X - XXX | = 1st Year Graduate Level Course                  |
| ENGL 7 X - XXX | = 2nd Year Graduate Level Course (MBA / LAW)      |
| ENGL 8 X - XXX | = 3rd Year Graduate Level Course (MBA / LAW)      |
| ENGL 9 X - XXX | = Upper Level Graduate Level Course               |

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
219 SOUTH DEARBORN STREET  
CHICAGO, ILLINOIS 60604



CHAMBERS OF  
JOHN ROBERT BLAKEY  
JUDGE

312-435-6058

June 7, 2021

The Honorable Elizabeth W. Hanes  
United States Magistrate Judge  
U.S. District Court for the Eastern District of Virginia  
Spottswood W. Robinson III and Robert R. Merhige, Jr. U.S. Courthouse  
701 East Broad Street  
Richmond, VA 23219

**Re: Jasmin Fashami's Clerkship Application**

Dear Judge Hanes,


Not hiring myself during this clerkship cycle, I am more than happy to write in strong support of Jasmin Fashami's application for a clerkship in your chambers. As an instructor, former state/federal prosecutor and now judge, I have enjoyed the opportunity to teach or supervise hundreds of promising young attorneys over the years, and Jasmin ranks high in that company.

I came to know Jasmin when she took my course, Federal Criminal Practice, in the fall of 2020 at the Notre Dame Law School. Based upon my first-hand observations in class, I know Jasmin possesses both the intellectual abilities, work ethic, and interpersonal qualities to excel as a law clerk. My class at Notre Dame, for example, focuses not only on substantive law and procedure, but also addresses difficult ethical questions and practical litigation skills. On her final exam (she earned an A-), she clearly and concisely analyzed complex fact patterns and legal issues, and exercised sound judgment in finding a resolution. Beyond her exceptional talent as a writer, she equally impressed me with the caliber of her oral argument and cross-examination assignments in class.

But perhaps most importantly, Jasmin is dedicated to public service and committed to serve her community and the Rule of Law. Throughout the semester, she often expressed her desire to pursue a career in the public sector, and I have no doubt that Jasmin will bring outstanding written and analytical skills, as well as a great personality to her clerkship.

Quite simply, I recommend her without reservation. If you have any questions, please do not hesitate to reach out.

Best Regards,

  
John Robert Blakey  
United States District Judge



U.S. Department of Justice  
Civil Division

Washington, DC 20530

June 10, 2021

To Whom It May Concern:

I write this letter of recommendation in support of Jasmin Fashami's application for a judicial clerkship for the 2022 term. Ms. Fashami served as an intern in the Office of Foreign Litigation January-May of this year. This Office is responsible for representing the interests of the United States of America in foreign courts as well as for U.S. implementation of the Hague Service Convention and the Hague Evidence Convention.

During her semester with the office, Ms. Fashami worked with several attorneys on a variety of matters. Her research included domestic case law pertaining to international judicial assistance issues, statutory interpretation, as well as treaty negotiating history. The requests made of Ms. Fashami required strong intellect as well as creativity in research methods. The attorneys with whom Ms. Fashami worked have uniformly reported that her work was excellent as it was well-drafted and carefully-considered. Ms. Fashami took the time to understand what was asked of her and gave significant thought to the request itself as well as to how her work product would assist the requestor and the Office generally.

Ms. Fashami is a true professional and would be an excellent addition to your team. While we were impressed by her work product, it might be Ms. Fashami's work ethic that stood out. When an attorney in the Office was provided a short deadline to prepare a memorandum relating to a request for an amicus brief from the Government, Ms. Fashami volunteered to work on a day off. With her assistance, the attorney was able to meet the deadline.

I believe that Ms. Fashami would be an excellent law clerk.

Please contact me at [michael.s.coffee@usdoj.gov](mailto:michael.s.coffee@usdoj.gov) or (202)616-1916 if I can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael S. Coffee".

Michael S. Coffee  
Trial Attorney

June 28, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing in support of Jasmin Fashami, a third-year law student at Notre Dame Law School, who has applied for a judicial clerkship.

Last fall semester, Ms. Fashami was a student in my National Security Law (NSL) class. In that class students were required to draft a 10,000-word term paper on a NSL-related topic. Last spring semester, I supervised a directed reading paper she drafted analyzing the Anti-Money Laundering Act of 2020.

Ms. Fashami distinguished herself academically in my National Security Law class, where she received an A- grade for the course. She was always well prepared for class and her comments during the classroom discussion reflected a solid understanding of the assigned reading material, including complex topics such as the Foreign Intelligence Surveillance Act and International Emergency Economic Powers Act. She also received an A- grade on her directed reading paper.

Ms. Fashami is an excellent writer. Her legal writing is clear and concise. Furthermore, her legal arguments are well constructed and persuasive. In both papers, her legal research was thorough, comprehensive, and cited relevant legal authority.

In addition, Ms. Fashami has a strong work ethic and completes assigned tasks in a timely manner. She also has a pleasant demeanor and works well with others.

In sum, Ms. Fashami is an extraordinarily bright, talented, and hard-working student. Moreover, I am confident that if selected for a judicial clerkship, she will make an invaluable contribution to the work of the court.

It is for these reasons that I strongly and enthusiastically recommend Ms. Fashami for a judicial clerkship position.

Sincerely,

Jimmy Gurulé

Professor of Law

Jimmy Gurule - Jimmy.Gurule.1@nd.edu - 574-631-5917

**Jasmin S. Fashami**

26033 Cape Drive, Unit 553  
Laguna Niguel, CA 92677

jfashami@nd.edu  
949-680-8493

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**WRITING SAMPLE**

Attached is a copy of a legal memorandum I wrote for my spring 2021 externship with the U.S. Department of Justice's Office of Foreign Litigation. In response to an attorney's employment case in South Korea, the memorandum examines how courts in the United States have responded to requests for non-monetary claims against foreign and domestic sovereigns. This work is wholly mine and not edited by another.

Please note that details of the South Korea case cannot be disclosed for confidentiality purposes. In addition, the views expressed in this writing sample are my own and do not necessarily reflect those of the Department.



**U.S. Department of Justice**  
Civil Division  
Office of Foreign Litigation

April 14, 2021

**MEMORANDUM**

TO: Whitney Hayes  
Trial Attorney

FROM: Jasmin Fashami  
Law Clerk

SUBJECT: Claims for Reinstatement of Employment against Foreign Sovereigns in U.S. Court

**I. INTRODUCTION**

This memorandum discusses how courts in the United States have addressed claims for reinstatement of employment and other non-monetary relief against foreign sovereigns and international organizations. This memorandum will also examine sovereign immunity of U.S. federal and state governments and American Indian tribes from non-monetary employment remedies.

To promote international comity, which is a “practice among political entities (as countries, states, or courts of different jurisdictions) involving especially mutual recognition of legislative, executive, and judicial acts,” federal courts in the United States will typically defer to foreign sovereigns to resolve or address legal issues that arise within their borders.<sup>1</sup> Customary international law also advises that courts refrain from imposing a remedy of reinstatement against another sovereign.

In U.S. courts, sovereign immunity protects foreign sovereigns and international organizations from suit unless a statutory exception applies. Employment case law suggests that the majority of plaintiffs typically seek only monetary damages from their employer in cases brought against foreign sovereigns.<sup>2</sup> Former employees of foreign sovereigns have rarely sought nullification of their dismissal, reinstatement of their employment, or other non-monetary relief, and when such remedies are sought, courts are unlikely to levy them.

<sup>1</sup> *Mujica v. AirScan Inc.*, 771 F.3d 580, 597-99 (9th Cir. 2014) (quoting Black’s Law Dictionary 324 (10th ed. 2014)).

<sup>2</sup> *See Janini v. Kuwait Univ.*, 43 F.3d 1534 (D.C. Cir. 1995) (where former employees of Kuwait University brought an action seeking monetary damages after the University terminated their employment contracts. The appellate court held that the unilateral termination fell within the commercial activity exception of the FSIA). *See also Forsythe v. Saudi Arabian Airlines Corp.*, 885 F.2d 285 (5th Cir. 1989) (where an airline pilot brought a wrongful discharge action against the airline and sought monetary damages. The district court dismissed the action on immunity grounds, and the circuit court affirmed the decision on the basis of *forum non conveniens*). *See also Holden v. Canadian Consulate*, 92 F.3d 918 (9th Cir. 1996) (where a former employee brought a wrongful termination action against the Canadian Consulate and sought monetary damages. The appellate court affirmed the district court’s order denying the Consulate’s sovereign immunity, because the plaintiff’s employment claims were considered commercial activity).



Conversely, reinstatement of employment is more commonly sought by plaintiffs bringing suit against the United States federal or state governments. Domestic employment actions brought against the government are also governed by principles of sovereign immunity. However, like foreign sovereigns, courts have held the immunity of domestic sovereigns in high regard, rarely ordering the imposition of non-monetary relief.

## **II. IMMUNITY OF FOREIGN SOVEREIGNS OR INTERNATIONAL ORGANIZATIONS FROM CLAIMS FOR REINSTATEMENT**

### **A. Foreign Sovereigns**

Very few courts in the United States have heard cases from former employees seeking reinstatement against a foreign sovereign or one of its instrumentalities, as most employees typically only seek monetary damages. However, in an instance where reinstatement has been sought, the court has been deferential to the foreign sovereign.

In *Dahman v. Embassy of Qatar*, El-Sayed Dahman, an Egyptian citizen and Virginia resident, was employed at the Embassy of Qatar in Washington, D.C.<sup>3</sup> After his termination, Dahman brought suit against both the Embassy and the country of Qatar for age discrimination under the Age Discrimination in Employment Act (ADEA) and the District of Columbia Human Rights Act (DCHRA).<sup>4</sup> Based on these violations, he sought “reinstatement or, in the alternative,” monetary damages.”<sup>5</sup> Although both defendants failed to appear, the district court “determine[d] that an exception to immunity applie[d] and that the plaintiff ha[d] a sufficient legal and factual basis for his claims.”<sup>6</sup> It held that Dahman was neither a civil servant nor employed in a non-commercial nature, so the case was allowed “to move forward under the commercial-activity exception to the FSIA.”<sup>7</sup> The court also found that he satisfied the standards for both the ADEA and DCHRA.<sup>8</sup> Dahman “successfully moved for a default judgment on liability,”<sup>9</sup> and the court ordered “an evidentiary hearing to determine the appropriate amount of damages” but did not mention whether the possibility of reinstatement remained available.<sup>10</sup> Three days before the damages hearing, the defendants appeared and filed a motion to vacate the

<sup>3</sup> *Dahman v. Embassy of Qatar*, No. CV 17-2628 (JEB), 2018 WL 3597660, at \*1 (D.D.C. July 26, 2018), vacated, 364 F. Supp. 3d 1 (D.D.C. 2019), aff’d, 815 F. App’x 554 (D.C. Cir. 2020).

<sup>4</sup> *Id.*

<sup>5</sup> For monetary damages, Dahman sought “ten years of front pay, along with commensurate benefits and medical-insurance coverage; back pay starting from his date of termination to the present day, also with benefits and insurance; severance pay, totaling \$2,261,583... and liquidated damages.” *Id.* at \*9.

<sup>6</sup> *Id.* at \*2 (citing *Jerez v. Republic of Cuba*, 777 F. Supp. 2d 6, 18-19 (D.D.C. 2011)).

<sup>7</sup> *Id.* at \*8.

<sup>8</sup> *Id.* at \*9.

<sup>9</sup> *Dahman*, 364 F. Supp. 3d at 2.

<sup>10</sup> *Id.* at 1.

liability judgment.<sup>11</sup> The court granted the motion to vacate and dismissed the case on *forum non conveniens* grounds.<sup>12</sup>

## B. International Organizations

The Supreme Court of the United States recently acknowledged that international organizations receive the same immunity protections as foreign sovereigns.<sup>13</sup> Deference is typically given to internal organization employment practices rather than allowing the judiciary to impose what it considers to be proper relief.

In *Broadbent v. Organization of American States*, several staff members of the General Secretariat of the Organization of American States (OAS) alleged that they were improperly discharged from their posts at the organization's headquarters in Washington, D.C.<sup>14</sup> The Administrative Tribunal of the OAS, which is an "internal court created to resolve personnel disputes," held that the employees' "discharges had been improper and that [they] should be reinstated at the grades they held when they were separated from service" or, if the Secretary General chose to "exercise the option of refusing to reinstate them," receive an indemnity.<sup>15</sup> The staff members brought the action when the Secretary General subsequently denied their reinstatement.<sup>16</sup>

The appellate court affirmed the district court's dismissal of the action, holding that "[t]he employment disputes between the appellants and OAS were disputes concerning the internal administrative staff of the Organization," which is considered "a non-commercial activity shielded by the doctrine of immunity" in the absence of a waiver.<sup>17</sup> The court relied on both the International Organizations Immunities Act (IOIA) and the Foreign Sovereign Immunities Act (FSIA) in its decision.<sup>18</sup> Although the FSIA is "generally silent about international organizations,"<sup>19</sup> the court did not view "employment by a foreign state or international organization of internal administrative personnel servants" as "doing business" within the meaning of Section 1605 of the FSIA.<sup>20</sup> Instead, it noted that an international organizations' officials "should be as free as possible... to perform their duties free from the

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 3. The forum-selection clause in Dahman's employment contract, specifically an arbitration clause, without a showing of public-interest considerations, necessitated dismissal. *Id.* at 4, 9. Although the defendants also moved to vacate on the grounds that the court lacked subject matter jurisdiction and "for several additional reasons having to do with immunity for the State of Qatar and whether Dahman exhausted EEOC remedies," the court did not address the other bases. *Id.* at 3.

<sup>13</sup> See generally *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759 (2019).

<sup>14</sup> All of the staff members were either "United States citizens or foreign nationals admitted to permanent residency in the United States." *Broadbent v. Org. of Am. States*, 628 F.2d 27, 28 (D.C. Cir. 1980).

<sup>15</sup> *Id.* at 28-29.

<sup>16</sup> *Id.* at 29.

<sup>17</sup> *Id.* at 36.

<sup>18</sup> *Id.* at 30-31.

<sup>19</sup> *Id.* at 31.

<sup>20</sup> *Id.* at 33



peculiarities of national politics.”<sup>21</sup> Therefore, it would be “inappropriate for the international organization to bind itself to the employment law of any particular member [state].”<sup>22</sup>

Similarly, in *Hudes v. Aetna Life Insurance Company*, an attorney formerly employed by the World Bank brought a pro se action against the Bank for wrongful termination.<sup>23</sup> The plaintiff sought both monetary damages and reinstatement of her position.<sup>24</sup> The district court dismissed the suit for failure “to state any claims for which this Court [could] grant her relief.”<sup>25</sup> Analogous to the *Broadbent* case, the court recognized the World Bank as an international organization covered by the IOIA, thereby allowing the organization to “[enjoy] immunity from suits such as Plaintiff’s unless it has expressly waived that immunity.”<sup>26</sup>

### **III. IMMUNITY OF FOREIGN SOVEREIGNS OR INTERNATIONAL ORGANIZATIONS FROM EMPLOYMENT CLAIMS FOR OTHER NON-MONETARY RELIEF**

#### **A. Foreign Sovereigns**

Similar to cases requesting reinstatement of employment, there are very few instances where plaintiffs have sought other forms of non-monetary relief against the employing foreign sovereign. Courts have considered various types of non-monetary relief, typically injunctive or declaratory, against foreign sovereigns or their instrumentalities. In such cases, the remedy is not typically granted.

In *Nnaka v. Federal Republic of Nigeria*, Godson Nnaka, an attorney allegedly retained by the Nigerian government, “filed [a] ten-count complaint against Nigeria and its Attorney General [Abubakar Malami, in his official capacity,] seeking hundreds of millions of dollars in damages and injunctive relief.”<sup>27</sup> Nnaka sought money damages and “an order appointing Nnaka and his attorney as private attorneys general for Nigeria and investing them with responsibility for the repatriation of stolen assets.”<sup>28</sup> The district court concluded that although it had

<sup>21</sup> *Id.* at 34.

<sup>22</sup> *Id.* at 34-35.

<sup>23</sup> The former attorney also alleged violations of various federal statutes, including the Securities Act, the Securities Exchange Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and HIPAA. *Hudes v. Aetna Life Ins. Co.*, 806 F. Supp. 2d 180, 183, 185 (D.D.C. 2011), *aff’d*, 493 F. App’x 107 (D.C. Cir. 2012).

<sup>24</sup> *Id.* at 187.

<sup>25</sup> *Id.* at 183. The court noted that the D.C. Circuit “recently affirmed the default rule [to be applied]: the Bank’s immunity should be construed as not waived unless the particular type of suit would further the Bank’s objectives.” *Id.* at 188 (quoting *Atkinson v. Inter-Am. Dev. Bank*, 156 F.3d 1335, 1338 (D.C. Cir. 1998) (internal citations omitted)).

<sup>26</sup> *Hudes*, 806 F. Supp. 2d at 187.

<sup>27</sup> Nnaka was a U.S. citizen of Nigerian descent who claimed “that Nigeria wronged [him] and caused him great injury... when its then-Attorney General told the U.S. government by letter that Nnaka did not have authority to represent Nigeria in the U.S. government’s pending asset forfeiture action.” *Nnaka v. Fed. Republic of Nigeria*, 238 F. Supp. 3d 17, 23, 28 (D.D.C. 2017), *aff’d sub nom. Nnaka v. Fed. Republic of Nigeria*, 756 F. App’x 16 (D.C. Cir. 2019).

<sup>28</sup> The first nine counts were “for unjust enrichment, quantum meruit, misrepresentation, libel, breach of contract, breach of the implied covenant of good faith and fair dealing, intentional infliction of emotional distress, wrongful discharge, and abuse of process,” and the requested damages totaled over \$700 million. *Id.* at 25.

jurisdiction to hear the case because the suit fell within the FSIA's commercial activity exception,<sup>29</sup> it dismissed the complaint "in its entirety" because some of Nnaka's allegations "[ran] afoul of the act of state doctrine, while others fail[ed] to state a claim upon which relief can be granted."<sup>30</sup> As for the final count seeking injunctive relief, the court stated that "needless to say, it [had] no authority to appoint Nnaka and his current counsel as private attorneys general for Nigeria."<sup>31</sup> The district court did not provide any further explanation or clarification for this assertion. On appeal, the appellate court made a similar statement that "[f]inally, and needless to say, the district court correctly concluded that it lacked authority to appoint private attorneys general for Nigeria."<sup>32</sup>

In *Rios v. Marshall*, thirty-eight migrant farmworkers alleged "that seven New York apple growers and two New York apple growers' cooperatives... and their agents... conspired among themselves and with an instrumentality of the government of Jamaica to replace plaintiffs in the New York apple harvest with temporary foreign workers from Jamaica."<sup>33</sup> Plaintiffs "primarily [sought] injunctive and declaratory relief" in addition to monetary relief.<sup>34</sup> The British West Indies Central Labour Organization (BWICLO), one of the named defendants, was "an administrative arm of the Caribbean Regional Labour Board" and a "representative of the British West Indian governments."<sup>35</sup> The BWICLO was viewed as an "instrumentality" of a foreign state that was immune from suit, because its conduct was not considered "commercial activity" under the FSIA.<sup>36</sup> Similarly, the court found the Government of Jamaica to be immune from suit under the FSIA, so plaintiffs' claims against both defendants were dismissed.<sup>37</sup>

#### B. International Organizations

U.S. courts that have addressed plaintiffs seeking other forms of non-monetary relief against their employing international organization have also recognized the immunity of the organization by not granting the requested remedy.

For example, in *Jam v. International Finance Corporation*, residents of India and local community stakeholders filed suit against the International Finance Corporation (IFC) for "property damage, environmental destruction, loss of livelihood, and threats to human health arising from" a coal-fired power plant.<sup>38</sup> The plaintiffs sought "various forms of injunctive relief or, in the alternative, compensatory and punitive damages."<sup>39</sup> The court acknowledged the

<sup>29</sup> *Id.* at 30.

<sup>30</sup> *Id.* at 23.

<sup>31</sup> *Id.* at 33-34.

<sup>32</sup> *Nnaka v. Fed. Republic of Nigeria*, 756 F. App'x 16, 18 (D.C. Cir. 2019).

<sup>33</sup> *Rios v. Marshall*, 530 F. Supp. 351, 355 (S.D.N.Y. 1981). Plaintiffs made similar allegations against the Florida Secretary of Labor and Puerto Rico Secretary of Labor. The court granted the first defendant's motion to dismiss for lack of in personam jurisdiction. *Id.* at 373. The court declined to review the conduct of the second defendant, because plaintiffs had bypassed the appropriate administrative remedies and procedures. *Id.* at 374.

<sup>34</sup> *Id.* at 356, 363-64. It is unclear what specific remedies the plaintiffs sought. The opinion does not specify, and the complaint is not available on Westlaw.

<sup>35</sup> Harold Edwards, BWICLO's Chief Liaison Officer, was also named as a defendant and was given the same immunity considerations as the Board. *Id.* at 371.

<sup>36</sup> *Id.* at 371-72.

<sup>37</sup> *Id.* at 372-73.

<sup>38</sup> *Jam v. Int'l Fin. Corp.*, 442 F. Supp. 3d 162, 166-67 (D.D.C. 2020).

<sup>39</sup> *Id.* at 169.

preceding Supreme Court decision that international organizations “enjoy the same immunity as is enjoyed by foreign governments under the [FSIA].”<sup>40</sup> However, it ultimately dismissed plaintiffs’ complaint and held that the IFC is immune: the “lawsuit [did] not fall within the FSIA’s commercial activity exception because the suit is not, at its core, based upon activity” that the public international organization “carried on or performed in the United States.”<sup>41</sup>

### **C. IMMUNITY OF U.S. FEDERAL OR STATE GOVERNMENTS FROM EMPLOYMENT CLAIMS FOR REINSTATEMENT AND OTHER NON-MONETARY RELIEF**

Similar to claims against foreign sovereigns and international organizations, the U.S. federal and state governments are typically immune from suit in employment reinstatement cases. Considered “an axiom of our jurisprudence,” the federal government has sovereign immunity and “is not liable to suit unless it consents thereto.”<sup>42</sup> Likewise, the sovereign immunity of state governments was established by the Eleventh Amendment of the United States Constitution<sup>43</sup> which has been interpreted to mean “that each State is a sovereign entity in our federal system,” and “it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent.”<sup>44</sup>

Although the Eleventh Amendment typically bars suit against state governments, the “Supreme Court’s decision in *Ex parte Young*... created an exception to Eleventh Amendment immunity for claims for prospective relief against state officials who have been sued in their official capacities.”<sup>45</sup> This decision has been used as a way around immunity of states for reinstatement and other non-monetary claims. Therefore, “prospective injunctive or declaratory relief against a state [official] is permitted... but retrospective relief in the form of a money judgment in compensation for past wrongs... is barred.”<sup>46</sup>

#### **A. U.S. Federal Government**

Few U.S. courts have heard cases seeking reinstatement or other non-monetary relief against the federal government. Similar to reinstatement cases against foreign sovereigns, courts are very hesitant to circumvent the federal government’s immunity protections without a clear assertion of consent.

<sup>40</sup> *Id.* at 167.

<sup>41</sup> *Id.* at 179.

<sup>42</sup> *Price v. United States*, 174 U.S. 373, 375-76 (1899).

<sup>43</sup> “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend. XI.

<sup>44</sup> *Seminole Tribe of Fla. v. Fla.*, 517, U.S. 44, 54 (1996).

<sup>45</sup> *Nelson v. Univ. of Texas at Dallas*, 535 F.3d 318, 320 (5th Cir. 2008).

<sup>46</sup> *Id.* at 322 (quoting *Brennan v. Steward*, 834 F.2d 1248, 1253 (5th Cir. 1988)). “[A] court need only conduct a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” *Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002). “*Young* also held that the Eleventh Amendment does not prevent federal courts from granting prospective injunctive relief to prevent a continuing violation of federal law.” *Green v. Mansour*, 474 U.S. 64, 68 (1985).

For example, in *Baca v. Butz*, an employee of the Soil Conservation Service brought an action under 42 U.S.C.A. § 1981 against the federal government<sup>47</sup> for discriminatory employment practices on the basis of national origin.<sup>48</sup> The plaintiff sought individual relief in the form of “a declaratory judgment that the defendants have acted contrary to their equal employment responsibilities imposed by statute and executive order,” monetary damages, “an injunction enjoining the defendant from continuing to discriminate against the plaintiff by denying him a promotion, and relief in the nature of mandamus to compel defendants to carry out their duties under the Civil Rights Act of 1964 and Executive Order 11478.”<sup>49</sup> The plaintiff also sought additional relief on behalf of the proposed class for “an injunction barring the defendants from further hiring or promoting persons not members of the proposed class until such time as defendants effectuate a population parity equal employment program that would within two years ensure representation of plaintiff’s class at all wage levels in the Soil Conservation Service.”<sup>50</sup> The court held that all forms of relief “are of such a nature that it would impinge upon the United States rather than upon the named defendants and thereby is an uncontested suit against the sovereign.”<sup>51</sup> Since the claims were “barred by the doctrine of sovereign immunity,” the plaintiff’s complaint was dismissed.<sup>52</sup>

#### B. U.S. State Governments

Although the *Ex parte Young* exception to the Eleventh Amendment’s sovereign immunity protections appears to provide plaintiffs with a viable route to seek reinstatement, courts remain deferential to state practices and seldom allow a plaintiff to move forward with claims for non-monetary relief. In some instances where non-monetary relief is permitted by the court, plaintiffs have ultimately settled for monetary damages instead.

For example, the State Employees Bargaining Agent Coalition (SEBAC)<sup>53</sup> brought suit against “executive branch officials of the State of Connecticut,” including the former Connecticut Governor and former Secretary of the Office of Policy & Management, seeking both monetary damages and “injunctive relief against defendants in their official capacities.”<sup>54</sup> Specifically, plaintiffs “sought reinstatement to their previous positions, or to other positions in the state workforce, and an array of other forms of relief, including a prohibition against retaliating against plaintiffs.”<sup>55</sup> When discussing whether legislative immunity may bar

<sup>47</sup> The specific defendants included the Secretary of the United States Department of Agriculture, the Administrative Director and Chief of the Soil Conservation Service, the New Mexico State Conservationist, and the New Mexico Area Conservationist for Las Cruces.

<sup>48</sup> *Baca v. Butz*, 394 F. Supp. 888, 889 (D.N.M. 1975).

<sup>49</sup> *Id.* at 892-93 (citations omitted).

<sup>50</sup> *Id.* at 893.

<sup>51</sup> “The mere fact that defendants are named individually does not mean that this is an action against them rather than the United States. The “effect of the action upon the sovereign rather than its form is controlling.”” *Id.* (quoting *Ogletree v. McNamara*, 449 F.2d 93, 100 (6th Cir. 1971)).

<sup>52</sup> *Id.* at 890, 894.

<sup>53</sup> Other plaintiffs included “twelve of thirteen unions comprising SEBAC and five individually named union members.” *State Emps. Bargaining Agent Coal. v. Rowland*, 494 F.3d 71, 75 (2d Cir. 2007).

<sup>54</sup> *Id.* at 75-76.

<sup>55</sup> *Id.* at 76. Per the complaint, plaintiffs “seek injunctive relief in the form of an order (1) compelling defendants ... in their official capacities, to reinstate [individual plaintiffs] to their former positions with the State of Connecticut or such other position as the Court deems appropriate, with full and appropriate restoration of seniority and benefits; (2) enjoining defendants, in their official capacities, from ordering further terminations of members of the plaintiff

plaintiffs' claims for injunctive relief, the court stated that because the plaintiffs sought "reinstatement to positions that have been legislatively eliminated, it would make no difference whether plaintiffs had been administratively fired prior to the legislative position elimination. This is so because, for reasons of legislative immunity, the District Court would lack the power to direct state officials to perform the legislative act of recreating the positions in order to reinstate the plaintiffs to them."<sup>56</sup> However, legislative immunity did "not bar the requested relief insofar as it involves reinstatement to existing positions *other than* the positions that plaintiffs previously held... [or] positions [that] the Court deems appropriate."<sup>57</sup> Ultimately, the appellate court "affirm[ed] the District Court's conclusion that the injunctive relief sought by plaintiffs [fell] within the exception to sovereign immunity set forth in *Ex parte Young*"<sup>58</sup> and held that plaintiffs' claims "were not barred by the Eleventh Amendment."<sup>59</sup>

However, following this decision, "the parties pursued settlement discussions resulting in the settlement of the case."<sup>60</sup> The settlement agreement between the parties "provided for both noneconomic compensatory damages... and economic damages."<sup>61</sup> Although plaintiffs originally sought declaratory and injunctive relief from the state, the case ultimately resulted in only providing monetary damages to the former employees.

In *Chi v. Board of Education of Harford County*, a Chinese-American foreign language instructor "allege[d] that his former employer, the Board of Education for Harford County, Maryland, and its officials, [the Superintendent and Assistant Superintendent] discriminated against him based on his race and national origin in violation of... the Civil Rights Act" and violated the parties' employment agreements.<sup>62</sup> The plaintiff sought "a declaration of past violations and corresponding damages, along with reinstatement and recertification."<sup>63</sup> Monetary relief was barred by the Eleventh Amendment, but plaintiff's declaratory and prospective injunctive relief was, at the time, possibly available.<sup>64</sup> The court dismissed the breach of

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Unions on account of their participation in or support of constitutionally-protected union activities; and (3) preventing defendants from penalizing, retaliating against, or undermining plaintiffs for their refusal to grant concessions and for their failure to support defendant Rowland's re-election campaign." *Id.* at 79 (citations omitted).

<sup>56</sup> *Id.* at 92-93. "[O]rdering such relief would require no less than a judicial order compelling defendants, in their official capacities, to re-create positions that would have been eliminated through prior legislative action. As the Third Circuit has recognized in similar circumstances, granting such relief contravenes 'the general policies underlying legislative immunity.'" *Id.* at 94 (quoting *Baraka v. McGreevey*, 481 F.3d 187, 203 (3d Cir. 2007)).

<sup>57</sup> "Even if positions occupied by the unreinstated employees do not currently exist, these employees can be reinstated to equivalent positions... in any number of other State agencies." *Id.* at 93 (citations omitted).

<sup>58</sup> *Id.* at 77. "Every Circuit to have considered the issue, including our own, has held that claims for reinstatement to previous employment satisfy the *Ex parte Young* exception to the Eleventh Amendment's sovereign immunity bar... [O]nly the First Circuit's decision in *Whalen* involved a claim seeking reinstatement to a position that no longer existed. However, the court in *Whalen* had no occasion to address whether the elimination of the plaintiff's position was relevant to its holding because the position had been restored, and plaintiff had been reinstated to the position, while the suit was pending. We therefore lack the benefit of any controlling or persuasive precedent that directly addresses whether the legislative elimination of a job position precludes a plaintiff's claim of an ongoing violation of federal law under *Ex parte Young*." *Id.* at 96 (internal quotations and citations omitted).

<sup>59</sup> *Id.* at 99.

<sup>60</sup> *State Emps. Bargaining Agent Coal. v. Rowland*, No. 3:03CV00221 (AVC), 2016 WL 5938154, at \*1 (D. Conn. Oct. 12, 2016).

<sup>61</sup> *Id.* at \*1.

<sup>62</sup> *Chi v. Bd. of Educ. of Harford Cty.*, No. CIV. A. HAR 93-3569, 1995 WL 131288, at \*1 (D. Md. Feb. 6, 1995).

<sup>63</sup> *Id.* at \*3.

<sup>64</sup> *Id.*

agreement claims for lack of jurisdiction, as well as the federal discrimination claims against the Board for Eleventh Amendment sovereign immunity.<sup>65</sup> The request for prospective injunctive relief against the State Board officials was originally allowed to move forward,<sup>66</sup> but the court later granted defendants' motion for summary judgement due to the plaintiff's failure to "come forth with evidence creating a genuine dispute of fact as to any of his remaining claims."<sup>67</sup>

In a similar case, a second-year anesthesiology resident at the State University of New York Health Sciences Center (SUNY) sued the Center, the Department Chair, the Director of Residency, and five "John and Janes Does" for discrimination on the basis of race, as well as various tort allegations.<sup>68</sup> The court held that because "Plaintiff's federal claims [were] not viable," it could not "allow Plaintiff's claim for reinstatement to proceed on state law claims."<sup>69</sup> Therefore, "Eleventh Amendment immunity bar[red] Plaintiff's [civil rights deprivation] claim against SUNY and the individual Defendants inasmuch as they are being sued in their official capacities"<sup>70</sup> Ultimately, the court granted defendants' motion for summary judgement.<sup>71</sup>

Finally, in *Soloviev v. Goldstein*, a Russian-American Aquatics Director and his wife filed suit against the City University of New York (CUNY) and several CUNY administrators and employees for "a sixteen-year-long campaign of harassment and discrimination against him on the basis of his national origin, race, age, and gender."<sup>72</sup> The court found that the plaintiffs had "not alleged that the Individual CUNY Defendants ha[d] the responsibility or capacity to provide him with the prospective relief he seeks, i.e. to reinstate him."<sup>73</sup> Therefore, the plaintiffs' federal claims "against the individual SUNY Defendants in their official capacities do not fall under the *Ex parte Young* exception and so are barred by the Eleventh Amendment."<sup>74</sup>

### C. Indian Tribes

Separate from U.S. federal and state government sovereign immunity, several courts have addressed the immunity of Native American tribes in employment reinstatement actions. Similar to issues of immunity related to foreign sovereigns or domestic governments, courts have been very deferential to tribal immunity protections.

For example, in *Bodi v. Shingle Springs Band of Miwok Indians*, a tribe member filed suit against the Shingle Springs Tribal Health Program, her former employer, the Shingle Springs Band of Miwok Indians, a "federally-registered and recognized Indian tribe," the Shingle Springs Tribal Health Board, and an individual defendant alleging that "she was wrongfully terminated

<sup>65</sup> *Id.* at \*4.

<sup>66</sup> *Id.*

<sup>67</sup> *Chi v. Bd. of Educ. of Harford Cty.*, No. CIV.A. HAR 93-3569, 1996 WL 250023, at \*5 (D. Md. Feb. 20, 1996).

<sup>68</sup> *Wang v. State Univ. of New York Health Scis. Ctr. at Stony Brook*, 470 F. Supp. 2d 178, 181-82 (E.D.N.Y. 2006), *aff'd sub nom. Wang v. State Univ. of New York Health Scis. Cen.*, 217 F. App'x 24 (2d Cir. 2007). Specifically, the plaintiff alleged "claims of intentional infliction of emotional distress, tortious interference with economic prospective advantage, and slander." *Id.* at 181.

<sup>69</sup> *Id.* at 186.

<sup>70</sup> *Id.* In addition, "[q]ualified immunity bars Plaintiff's action against [the Department Chair and Director] in their individual capacities." *Id.* at 187.

<sup>71</sup> *Id.* at 190.

<sup>72</sup> *Soloviev v. Goldstein*, 104 F. Supp. 3d 232, 240-41. (E.D.N.Y. 2015).

<sup>73</sup> *Id.* at 245.

<sup>74</sup> *Id.*

due to her illness in violation of state and federal law.”<sup>75</sup> The plaintiff sought “injunctive equitable relief against the current [chairperson of the Health Board] in her official capacity (or whomever is the chairperson... at the time of entry of this Order) for reinstatement in her position as the Executive Director of the... Health Clinic. Plaintiff [also sought] the same job duties, rights, responsibilities, salary and benefits as she enjoyed prior to her... termination.”<sup>76</sup> The court stated that “[a]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.”<sup>77</sup> Originally, the district court held that “the Tribe waived its immunity through removal” from state to federal court.<sup>78</sup> However, the appellate court held that “the act of removal [did] not express the clear and unequivocal waiver that is required for a tribe to relinquish its immunity from suit,” thereby reversing and remanding the case.<sup>79</sup>

Similarly, in *Bruner v. Creek Nation Casino*, a Cherokee citizen and former employee of the Gaming Operations Authority Board (GOAB)<sup>80</sup> and the Creek Nation Casino alleged that “she was terminated when she refused [a] demotion” after telling her supervisor about her serious health condition.<sup>81</sup> The plaintiff sought “reinstatement, money damages and injunctive relief for wrongful termination, interference with a protected right, and discrimination/retaliation in violation by [the] Casino of her FMLA [Federal Medical Leave Act] rights.”<sup>82</sup> The magistrate judge recommended that “the Motion of Defendant Creek Nation Casino” be dismissed, because the court lacked subject matter jurisdiction over the claim due to the absence of the tribe’s clear waiver of sovereign immunity,<sup>83</sup> and the district court accepted the recommendation.<sup>84</sup>

#### **D. CONCLUSION**

Although case law on reinstatement of employment against foreign sovereigns remains sparse, courts in the United States have demonstrated their regard for sovereign immunity of international organizations, U.S. federal and state governments, and Native American tribes. As a matter of international comity and customary international law, the United States is unlikely to impose reinstatement as relief against a foreign sovereign.

<sup>75</sup> *Bodi v. Shingle Springs Band of Miwok Indians*, 19 F. Supp. 3d 978, 979-80 (E.D. Cal. 2014), as corrected (May 16, 2014), rev’d and remanded, 832 F.3d 1011 (9th Cir. 2016).

<sup>76</sup> *Id.* at 987.

<sup>77</sup> *Id.* (quoting *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998)).

<sup>78</sup> *Id.* at 988. The district court also granted defendants’ motion to dismiss the Health Program, because “it ha[d] no legal existence separate from that of the Tribe and the Health Board.” *Id.* at 988-89.

<sup>79</sup> *Bodi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1014 (9th Cir. 2016). According to Westlaw, there are no other filings on record following the appellate court’s decision.

<sup>80</sup> GOAB is a “governmental agency of the tribe charged with the responsibility of administering and managing the tribe’s gaming facilities and operations.” *Bruner v. Creek Nation Casino*, No. 06-CV-541 TCK/SAJ, 2007 WL 9782751, at \*1-2 (N.D. Okla. Feb. 28, 2007), report and recommendation adopted, No. 06-CV-541-TCK-SAJ, 2007 WL 9782755 (N.D. Okla. Mar. 20, 2007).

<sup>81</sup> *Id.* at \*1.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at \*4-5.

<sup>84</sup> *Bruner v. Creek Nation Casino*, No. 06-CV-541-TCK-SAJ, 2007 WL 9782755, at \*1 (N.D. Okla. Mar. 20, 2007).

## Applicant Details

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 Middle Initial **T**  
 Last Name **Favero**  
 Citizenship Status **U. S. Citizen**  
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|-----------------|----------------------------------|
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| City            | <b>Iowa City</b>                 |
| State/Territory | <b>Iowa</b>                      |
| Zip             | <b>52246</b>                     |
| Country         | <b>United States</b>             |

Contact Phone Number **636-579-6096**

## Applicant Education

BA/BS From **Truman State University**  
 Date of BA/BS **May 2019**  
 JD/LLB From **University of Iowa College of Law**  
<http://www.law.uiowa.edu>  
 Date of JD/LLB **May 13, 2022**  
 Class Rank **Not yet ranked**  
 Law Review/Journal **Yes**  
 Journal(s) **Iowa Law Review**  
 Moot Court Experience **No**

## Bar Admission

## Prior Judicial Experience

Judicial Internships/Externships **No**  
 Post-graduate Judicial Law Clerk **No**



## Specialized Work Experience

### Recommenders

Hughes, Emily  
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Reitz, John C.  
john-reitz@uiowa.edu  
319-335-9086

### References

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Assistant Contact: Andrea Flaherty (andrea-flaherty@uiowa.edu)

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(Leia.Jesionowski@mspd.mo.gov)

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Jared Favero**

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April 14, 2021

The Honorable Elizabeth W. Hanes  
U.S. District Court, Eastern District of Virginia

Dear Judge Hanes,

I would like to be considered for the law clerk position beginning in August 2022. I am a second-year student at The University of Iowa College of Law and a Managing Editor for the *Iowa Law Review*. I believe my practical and educational experiences would allow me to excel as your law clerk. As someone inclined toward a career in the courtroom, I would be eager to apply my skills to the variety legal issues that come before the court.

In my work, I aim to develop a well-rounded and balanced understanding of the law. As a legal intern with the Missouri State Public Defender's Office ("MSPD"), I completed numerous research projects related to client's legal issues, ranging from simple possession to vindictive prosecution. I regularly observed courtroom practices with the office attorneys, including a bench trial and depositions, and I had to opportunity to draft several motions. It was during this internship with the MSPD that ignited my passion for public service. This coming summer, I plan to expand upon my public interest background while working with the Office of the Federal Public Defender in Davenport, Iowa.

My experiences at Iowa Law have prepared me to succeed as a judicial clerk. As a research assistant to Professor Emily Hughes, I have learned how to provide constructive feedback on another author's work and to devote time to researching unfamiliar subjects. I have compiled and summarized National Association for Public Defense amicus briefs for use on their website, and I research legal ethics issues, specifically in the context of in-house counsel. As a student writer for the *Iowa Law Review*, I learned to love the Bluebook and have developed outstanding researching, writing, and editing skills. Moving forward as a Managing Editor, I will help lead the Volume 107 publication process and reinforce my strengths as a careful editor and consistent writer. Though my transcript may not reflect it, my publication success and editorship with the *Iowa Law Review*, as well as my award-winning performance in appellate advocacy, demonstrate my ability to carry out the duties of a law clerk.

Please find enclosed my resume, transcript, and writing sample. Letters of recommendation from Professors Emily Hughes and John Reitz will arrive later as part of my application materials. I look forward to speaking with you about the opportunity to clerk in your chambers.

Sincerely,  
Jared Favero

## Jared Favero

926 Harlocke Street, Iowa City, IA 52246 | (636)-579-6096 | jared-favero@uiowa.edu

### EDUCATION

#### The University of Iowa College of Law

Iowa City, IA

Juris Doctor candidate

May 2022

Activities: *Iowa Law Review* Student Writer and Managing Editor

Publication: *Certificate for the Needy: How the Iowa CON Statute Harms the Mentally Ill*, 107 IOWA L. REV. \_\_ (forthcoming)

Selected Coursework: Trial Advocacy, Appellate Advocacy, Van Oosterhout Baskerville Moot Court Competition (3<sup>rd</sup> Place Brief)

#### Truman State University

Kirkville, MO

Bachelor of Arts in History, *magna cum laude*

May 2019

Minors in Business Administration and Psychology

Honors: President's List multiple semesters

Activities: Ultimate Frisbee Club, Treasurer; Club Volleyball, Team Member

### EXPERIENCE

#### The University of Iowa College of Law

Iowa City, IA

Law Research Assistant to Prof. Emily Hughes

August 2020 – Present

- Researching and highlighting case opinions and related amicus briefs filed by the National Association for Public Defense (NAPD) on important issues facing criminal defendants, such as Fourth Amendment protections and bail reform
- Providing case background and summarized amicus arguments for use on NAPD website
- Researching and compiled articles and opinions related to new legal ethics issues

#### Missouri State Public Defender

Union, MO

Legal Intern

May 2020 – August 2020

- Attended and observed court proceedings regularly with supervising attorneys
- Researched and drafted memos for various legal issues for the development of defense theories
- Analyzed and organized discovery for case files
- Frequently discussed opinions and observations with supervising attorneys for defense strategy and motion practice

#### Truman State University

Kirkville, MO

History Research Assistant

January 2017 – May 2019

- Identified and transcribed 30+ FBI Agent interviews relevant to American intervention in Latin America during the 20<sup>th</sup> Century
- Catalogued and summarized 400+ CIA FOIA documents on American intelligence operations in Latin America per semester for bibliographic use
- Learned EndNote reference management software

Business Administration/Law Research Assistant

January 2019 – May 2019

- Aided in finding sources, citing, and proofreading a law review article on blockchain technology and its potential use in contract law
- Created test questions on contract law and government regulation for a college-level class



STUDENT GRADE REPORT

Name: Jared T. Favero  
 University ID: 01355749  
 Month/Date of Birth: 02/28  
 Date Generated: 02/23/21 01:39 PM

Degree(s) from other institution(s):  
 BA Truman State University, Kirksville, MO 2019

Previous/Transfer institution(s) summary:  
 Truman State University, Kirksville, MO 2015-2019

\*\*\*\*\*START ACADEMIC RECORD\*\*\*\*\*

| Course Number                     | Course Title                            | Sem Hrs | Grade |
|-----------------------------------|---|---------|-------|
| <b>Fall 2019 / College of Law</b> |   |         |       |
| LAW 8037                          | Property                                | 4.0     | 2.2   |
| LAW 8032                          | Legal Analysis Writing and Research I   | 2.0     | 3.1   |
| LAW 8017                          | Contracts                               | 4.0     | 3.2   |
| LAW 8046                          | Torts                                   | 4.0     | 3.5   |
| LAW 8026                          | Introduction to Law and Legal Reasoning | 1.0     | P     |

|          | Graded Hrs Att | GPA  | Graded Hrs Earned | Hrs Earned |
|----------|----------------|------|-------------------|------------|
| UI Term: | 14.0           | 2.99 | 14.0              | 15.0       |
| UI Cum:  | 14.0           | 2.99 | 14.0              | 15.0       |

**Spring 2020 / College of Law ‡**

|          |  |     |   |
|----------|--|-----|---|
| LAW 8006 | Civil Procedure                        | 4.0 | P |
| LAW 8010 | Constitutional Law I                   | 3.0 | P |
| LAW 8022 | Criminal Law                           | 3.0 | P |
| LAW 8033 | Legal Analysis Writing and Research II | 2.0 | P |
| LAW 8670 | Labor Law                              | 3.0 | P |

|          | Graded Hrs Att | GPA  | Graded Hrs Earned | Hrs Earned |
|----------|----------------|------|-------------------|------------|
| UI Term: | 0.0            | 0.00 | 0.0               | 15.0       |
| UI Cum:  | 14.0           | 2.99 | 14.0              | 30.0       |

**Fall 2020 / College of Law <sup>1</sup>**

|          |                               |     |     |
|----------|-------------------------------|-----|-----|
| LAW 8194 | Basic Federal Income Taxation | 3.0 | 3.3 |
| LAW 8460 | Evidence                      | 3.0 | 3.4 |
| LAW 8280 | Constitutional Law II         | 3.0 | 3.6 |
| LAW 8105 | Administrative Law            | 3.0 | 3.9 |
| LAW 9010 | Appellate Advocacy I          | 1.0 | P   |
| LAW 9115 | Law Review                    | 1.0 | P   |

|          | Graded Hrs Att | GPA  | Graded Hrs Earned | Hrs Earned |
|----------|----------------|------|-------------------|------------|
| UI Term: | 12.0           | 3.55 | 12.0              | 14.0       |
| UI Cum:  | 26.0           | 3.25 | 26.0              | 44.0       |

**Spring 2021 / College of Law**

|          |                                       |     |    |
|----------|---------------------------------------|-----|----|
| LAW 8331 | Business Associations                 | 3.0 | IP |
| LAW 8350 | Criminal Procedure: Investigation     | 3.0 | IP |
| LAW 8791 | Professional Responsibility           | 3.0 | IP |
| LAW 9021 | Van Oosterhout Baskerville Mt Ct Comp | 1.0 | IP |
| LAW 9115 | Law Review                            | 1.0 | IP |
| LAW 9060 | Trial Advocacy                        | 2.0 | P  |

|          | Graded Hrs Att | GPA  | Graded Hrs Earned | Hrs Earned |
|----------|----------------|------|-------------------|------------|
| UI Term: | 0.0            | 0.00 | 0.0               | 2.0        |
| UI Cum:  | 26.0           | 3.25 | 26.0              | 46.0       |

‡In spring semester of 2020, a global public health emergency required marked changes to university operations that significantly affected student enrollment, learning, and grading. Unusual enrollment patterns and grades during this period reflect the tumult of the time, not necessarily the work of individual students.

<sup>1</sup>University operations and instruction continued to adapt to the global public health emergency. Many course offerings and modalities were impacted, which in turn may have affected an individual student's experience in each course.

\*\*\*\*\*END ACADEMIC RECORD\*\*\*\*\*

**Hours and Points Summary**

The Hours and Points Summary includes transfer credit in the "Overall Cumulative" GPA and "Overall Earned" hours (not necessarily hours towards degree). This summary is only informational and will not appear on your official transcript. Your official transcript is only your University of Iowa hours and GPA as displayed above

|                     | Hours | Points | GPA  |
|---------------------|-------|--------|------|
| UI Cumulative       | 26.0  | 84.40  | 3.25 |
| Transfer Cumulative | 0.0   | 0.00   | 0.00 |
| Overall Cumulative  | 26.0  | 84.40  | 3.25 |
| Overall Earned      | 46.0  |        |      |
| Transfer Earned     |       |        |      |

4/4/2021

Academic Transcript

## Display Transcript

000917247 Jared T. Favero  
Apr 04, 2021 07:06 pm



[Transfer Credit](#) [Institution Credit](#) [Transcript Totals](#)

### Transcript Data

#### STUDENT INFORMATION

**Name :** Jared T. Favero  
**Birth Date:** Feb 28, 1997

\*\*\*Transcript type:ADV is NOT Official \*\*\*

#### DEGREES AWARDED

**Awarded:** Bachelor of Arts **Degree Date:** May 11, 2019  
**Institutional Honors:** Magna Cum Laude, President's Recognition

#### Curriculum Information

**Major:** History  
**Minor:** Psychology  
**Minor:** Business Administration

#### TRANSFER CREDIT ACCEPTED BY INSTITUTION [-Top-](#)

**201560:** Advanced Placement

| Subject       | Course | Title                        | Grade        | Credit Hours | Quality Points | R              |      |
|---------------|--------|------------------------------|--------------|--------------|----------------|----------------|------|
| ECON          | 200    | Principles of Macroeconomics | T            | 3.000        |                | 0.00           |      |
| ECON          | 201    | Principles of Microeconomics | T            | 3.000        |                | 0.00           |      |
| ENG           | 190    | Writing as Critical Thinking | T            | 3.000        |                | 0.00           |      |
| HIST          | 104    | US History I, 1607-1877      | T            | 3.000        |                | 0.00           |      |
| HIST          | 105    | US History II, 1877-Present  | T            | 3.000        |                | 0.00           |      |
| HIST          | 131    | World Civ before AD 500      | T            | 3.000        |                | 0.00           |      |
| POL           | 012    | POL 161 Not MO Statute       | T            | 3.000        |                | 0.00           |      |
| POL           | 171    | Intro to Political Science   | T            | 3.000        |                | 0.00           |      |
| PSYC          | 166    | General Psychology           | T            | 3.000        |                | 0.00           |      |
|               |        | Attempt Hours                | Passed Hours | Earned Hours | GPA Hours      | Quality Points | GPA  |
| Current Term: |        | 0.000                        | 27.000       | 27.000       | 0.000          | 0.00           | 0.00 |

Unofficial Transcript

**201560:** Foreign Language Placement

| Subject       | Course | Title                 | Grade        | Credit Hours | Quality Points | R              |      |
|---------------|--------|-----------------------|--------------|--------------|----------------|----------------|------|
| SPAN          | 101    | Elementary Spanish I  | T            | 3.000        |                | 0.00           |      |
| SPAN          | 102    | Elementary Spanish II | T            | 3.000        |                | 0.00           |      |
|               |        | Attempt Hours         | Passed Hours | Earned Hours | GPA Hours      | Quality Points | GPA  |
| Current Term: |        | 0.000                 | 6.000        | 6.000        | 0.000          | 0.00           | 0.00 |

Unofficial Transcript

4/4/2021

Academic Transcript

INSTITUTION CREDIT [-Top-](#)

Term: Fall 2015

Academic Standing: Good Standing

| Subject       | Course | Level | Title                     | Grade         | Credit Hours | Quality Points | Start and End Dates | R              |
|---------------|--------|-------|---------------------------|---------------|--------------|----------------|---------------------|----------------|
| HIST          | 211    | UG    | WE/World History I        | A             | 3.000        | 12.00          |                     |                |
| HLTH          | 195    | UG    | Lifetime Health & Fitness | A             | 1.500        | 6.00           |                     |                |
| HLTH          | 196    | UG    | Lifetime Fitness          | A             | 0.500        | 2.00           |                     |                |
| INDV          | 101    | UG    | Truman Week               | P             | 1.000        | 0.00           |                     |                |
| MATH          | 186    | UG    | Precalculus               | B             | 3.000        | 9.00           |                     |                |
| PHRE          | 185    | UG    | Exploring Religions       | B             | 3.000        | 9.00           |                     |                |
| SPAN          | 201    | UG    | Intermediate Spanish I    | A             | 3.000        | 12.00          |                     |                |
|               |        |       |                           | Attempt Hours | Passed Hours | Earned Hours   | GPA Hours           | Quality Points |
| Current Term: |        |       |                           | 14.000        | 15.000       | 15.000         | 14.000              | 50.00          |
| Cumulative:   |        |       |                           | 14.000        | 15.000       | 15.000         | 14.000              | 50.00          |

Unofficial Transcript

Term: Spring 2016

Academic Standing: Good Standing

| Subject       | Course | Level | Title                          | Grade         | Credit Hours | Quality Points | Start and End Dates | R              |
|---------------|--------|-------|--------------------------------|---------------|--------------|----------------|---------------------|----------------|
| HIST          | 212    | UG    | WE/ World History II           | A             | 3.000        | 12.00          |                     |                |
| HIST          | 298    | UG    | American Institutional History | A             | 1.000        | 4.00           |                     |                |
| HIST          | 313    | UG    | WE/US Hist & Historiography I  | A             | 3.000        | 12.00          |                     |                |
| SPAN          | 202    | UG    | Intermediate Spanish II        | A             | 3.000        | 12.00          |                     |                |
| STAT          | 190    | UG    | Basic Statistics               | A             | 3.000        | 12.00          |                     |                |
|               |        |       |                                | Attempt Hours | Passed Hours | Earned Hours   | GPA Hours           | Quality Points |
| Current Term: |        |       |                                | 13.000        | 13.000       | 13.000         | 13.000              | 52.00          |
| Cumulative:   |        |       |                                | 27.000        | 28.000       | 28.000         | 27.000              | 102.00         |

Unofficial Transcript

Term: Fall 2016

Academic Standing: Good Standing

| Subject       | Course | Level | Title                        | Grade         | Credit Hours | Quality Points | Start and End Dates | R              |
|---------------|--------|-------|------------------------------|---------------|--------------|----------------|---------------------|----------------|
| HIST          | 314    | UG    | WE/Hist & Historiography II  | A             | 3.000        | 12.00          |                     |                |
| HIST          | 392    | UG    | WE/Mexican History           | A             | 3.000        | 12.00          |                     |                |
| HIST          | 437    | UG    | Age of Jackson: 1820-1848    | B             | 3.000        | 9.00           |                     |                |
| MATH          | 194    | UG    | Liberal Arts & Sci Calculus  | A             | 3.000        | 12.00          |                     |                |
| MUSI          | 204    | UG    | Perspect in Music: Classical | A             | 3.000        | 12.00          |                     |                |
|               |        |       |                              | Attempt Hours | Passed Hours | Earned Hours   | GPA Hours           | Quality Points |
| Current Term: |        |       |                              | 15.000        | 15.000       | 15.000         | 15.000              | 57.00          |
| Cumulative:   |        |       |                              | 42.000        | 43.000       | 43.000         | 42.000              | 159.00         |

Unofficial Transcript

Term: Spring 2017

Academic Standing: Good Standing

4/4/2021

Academic Transcript

| Subject       | Course | Level | Title                         | Grade         | Credit Hours | Quality Points | Start and End Dates | R              |      |
|---------------|--------|-------|-------------------------------|---------------|--------------|----------------|---------------------|----------------|------|
| BSAD          | 107    | UG    | Computer Applications         | A             |              | 1.000          | 4.00                |                |      |
| COMM          | 170    | UG    | Public Speaking               | A             |              | 3.000          | 12.00               |                |      |
| HIST          | 380    | UG    | Survey of Modern Europe II    | A             |              | 3.000          | 12.00               |                |      |
| HIST          | 384    | UG    | Peoples of the Russian Empire | A             |              | 3.000          | 12.00               |                |      |
| PHYS          | 185    | UG    | College Physics I with Lab    | B             |              | 4.000          | 12.00               |                |      |
|               |        |       |                               | Attempt Hours | Passed Hours | Earned Hours   | GPA Hours           | Quality Points | GPA  |
| Current Term: |        |       |                               | 14.000        | 14.000       | 14.000         | 14.000              | 52.00          | 3.71 |
| Cumulative:   |        |       |                               | 56.000        | 57.000       | 57.000         | 56.000              | 211.00         | 3.76 |

Unofficial Transcript

Term: Fall 2017

Academic Standing: Good Standing

| Subject       | Course | Level | Title                          | Grade         | Credit Hours | Quality Points | Start and End Dates | R              |      |
|---------------|--------|-------|--------------------------------|---------------|--------------|----------------|---------------------|----------------|------|
| ACCT          | 220    | UG    | Intro to Financial Accounting  | A             | 3.000        | 12.00          |                     |                |      |
| HIST          | 381    | UG    | WE/Russia from EarlyTimes-1861 | A             | 4.000        | 16.00          |                     |                |      |
| HIST          | 390    | UG    | WE/Andean History              | A             | 4.000        | 16.00          |                     |                |      |
| JINS          | 377    | UG    | WE/Serial Killers & Psychopths | B             | 3.000        | 9.00           |                     |                |      |
|               |        |       |                                | Attempt Hours | Passed Hours | Earned Hours   | GPA Hours           | Quality Points | GPA  |
| Current Term: |        |       |                                | 14.000        | 14.000       | 14.000         | 14.000              | 53.00          | 3.78 |
| Cumulative:   |        |       |                                | 70.000        | 71.000       | 71.000         | 70.000              | 264.00         | 3.77 |

Unofficial Transcript

Term: Spring 2018

Academic Standing: Good Standing

| Subject       | Course | Level | Title                          | Grade         | Credit Hours | Quality Points | Start and End Dates | R              |      |
|---------------|--------|-------|--------------------------------|---------------|--------------|----------------|---------------------|----------------|------|
| ACCT          | 221    | UG    | Intro to Management Accounting | B             | 3.000        | 9.00           |                     |                |      |
| BSAD          | 234    | UG    | Legal Environment of Business  | A             | 3.000        | 12.00          |                     |                |      |
| HIST          | 382    | UG    | WE/Late Imper Russia&Sov       | A             | 4.000        | 16.00          |                     |                |      |
| PSYC          | 266    | UG    | Experimental Psychology        | A             | 3.000        | 12.00          |                     |                |      |
|               |        |       |                                | Attempt Hours | Passed Hours | Earned Hours   | GPA Hours           | Quality Points | GPA  |
| Current Term: |        |       |                                | 13.000        | 13.000       | 13.000         | 13.000              | 49.00          | 3.76 |
| Cumulative:   |        |       |                                | 83.000        | 84.000       | 84.000         | 83.000              | 313.00         | 3.77 |

Unofficial Transcript

Term: Fall 2018

Academic Standing: Good Standing

| Subject | Course | Level | Title                        | Grade         | Credit Hours | Quality Points | Start and End Dates | R              |     |
|---------|--------|-------|------------------------------|---------------|--------------|----------------|---------------------|----------------|-----|
| BSAD    | 325    | UG    | Principles of Marketing      | A             | 3.000        | 12.00          |                     |                |     |
| HIST    | 496    | UG    | WE/Frontier West             | A             | 4.000        | 16.00          |                     |                |     |
| PSYC    | 370    | UG    | Human Sensation & Perception | A             | 3.000        | 12.00          |                     |                |     |
| PSYC    | 377    | UG    | Developmental Psychology     | A             | 3.000        | 12.00          |                     |                |     |
|         |        |       |                              | Attempt Hours | Passed Hours | Earned Hours   | GPA Hours           | Quality Points | GPA |

4/4/2021

Academic Transcript

|                      |        |        |        |        |        |      |
|----------------------|--------|--------|--------|--------|--------|------|
| <b>Current Term:</b> | 13.000 | 13.000 | 13.000 | 13.000 | 52.00  | 4.00 |
| <b>Cumulative:</b>   | 96.000 | 97.000 | 97.000 | 96.000 | 365.00 | 3.80 |

Unofficial Transcript

Term: Spring 2019

Academic Standing: Good Standing

| Subject | Course | Level | Title                   | Grade | Credit Hours | Quality Points | Start and End Dates | R |
|---------|--------|-------|-------------------------|-------|--------------|----------------|---------------------|---|
| BSAD    | 329    | UG    | Principles of Finance   | B     | 3.000        | 9.00           |                     |   |
| BSAD    | 349    | UG    | Organizational Behavior | A     | 3.000        | 12.00          |                     |   |
| HIST    | 498    | UG    | WE/Senior Seminar       | A     | 4.000        | 16.00          |                     |   |
| PSYC    | 331    | UG    | Cognitive Psychology    | A     | 3.000        | 12.00          |                     |   |

|                      | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA  |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| <b>Current Term:</b> | 13.000        | 13.000       | 13.000       | 13.000    | 49.00          | 3.76 |
| <b>Cumulative:</b>   | 109.000       | 110.000      | 110.000      | 109.000   | 414.00         | 3.79 |

Unofficial Transcript

TRANSCRIPT TOTALS (UNDERGRADUATE) -Top-

|                           | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA  |
|---------------------------|---------------|--------------|--------------|-----------|----------------|------|
| <b>Total Institution:</b> | 109.000       | 110.000      | 110.000      | 109.000   | 414.00         | 3.79 |
| <b>Total Transfer:</b>    | 0.000         | 33.000       | 33.000       | 0.000     | 0.00           | 0.00 |
| <b>Overall:</b>           | 109.000       | 143.000      | 143.000      | 109.000   | 414.00         | 3.79 |

Unofficial Transcript

RELEASE: 8.7.1

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April 20, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing in strong support of Jared Favero's application for a summer position with you. I met Jared last year, when he was a student in my Criminal Law class. This semester I have gotten to know him even better because he is working with me as a Research Assistant. Based on what I have observed from teaching and working with Jared, he is an all star. I strongly support his application and can't say enough good things about him.

Teaching Jared in Criminal Law, I saw evidence of careful reading, precise thinking, and an ability to make connections across cases and subject matter. He listened to his fellow students openly and fully. He was not afraid to speak his mind, and he did so in a way that invited conversation and dialogue, rather than closing it down. Even as we shifted on-line during the pandemic, Jared stood out as being one of the top students in the class. You can't tell that from the transcript because we moved to pass/fail, but he was a top student.

This semester he has done a variety of research assignments, all focused on criminal defense. I am a former Iowa state public defender, did death penalty defense in Illinois, am on the steering committee of the National Association for Public Defense, and I serve as co-chair of NAPD's amicus committee. Jared has helped me tremendously with some of the amicus committee work, including tracking down and summarizing briefs to update our website, as well as helping to support one of the briefs we filed in the fall. Another example is that I am giving an ethics talk about criminal defense responsibilities during COVID to Georgia criminal defense attorneys soon, and Jared has been my right-hand person helping to find interesting cases, articles, orders, and best practices. These are just two examples in the last few weeks. The gist is that Jared is very smart, somebody on whom I depend, organized, and a good researcher. He is somebody who gets things done, and he does them well.

In short, Jared is an excellent candidate for an internship with you. He asks good questions, he figures things out that I didn't even know I hadn't explained well, and he has excelled in his ability to stay on track and be productive through the pandemic. I have the highest hopes for his legal career.

Thank you so much for considering his application.

Sincerely yours,

Emily Hughes  
Associate Dean for Academic Affairs  
Professor and Bouma Fellow in Law  
emily-hughes@uiowa.edu  
319-335-9886

Emily Hughes - emily-hughes@uiowa.edu

April 14, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

This is a letter in strong support of the application by Jared Favero for a position as a judicial clerk in your chambers. Mr. Favero took my Administrative Law course last fall. The class was a traditional lecture and discussion class with forty-four students, and I normally do not get to know most students in a class of that size very well, but I got to know Mr. Favero better than most because he was almost always among the first to pop up on the class Zoom screen before class, he often stayed after class to ask follow-up questions, and his contributions to class discussion were excellent. I generally follow a pattern of cold-calling in class, and for the Zoom class I assigned about nine students, which I call a "law firm," to be prepared on each day's assigned readings and responsible to respond to my questions. His answers for his "firm" always showed that he had read the materials and thought about them carefully. He also asked perceptive questions of me in class. I was thus not at all surprised to find that he had done very well on the final exam, which was subject to blind grading. Finally, he participated in a special Zoom conference with me when I agreed to write this letter for him.

I support his application gladly. He clearly has the strong analytical and writing skills we expect of top law students and lawyers. In accordance with the mandatory curve used at Iowa, I limited the number of A's I gave in Administrative Law to ten percent of the class, and the 3.9 I gave Mr. Favero made him one of the four students who earned that distinction. The A he earned in Administrative Law was part of a very heartening trend in his grades overall. His first semester of law school, like that of so many students, was not so successful, and then his second semester happened to be the first semester that the law school went to on-line instruction because of covid-19. For that semester, Iowa adopted mandatory pass-fail grading, so he had no opportunity to rehabilitate his gpa then. However, the next semester we returned to graded classes even though many of the classes, like my administrative law course, remained entirely on line, and Mr. Favero turned in a much stronger performance. I strongly believe that that trend is a much better picture of his true abilities.

Mr. Favero is a well-rounded individual. He is well-spoken with a pleasant manner, and he appears to have a lively curiosity and an open mind. His achievements in Iowa Law's extra-curricular programs show that he works well with his peers, and he certainly is no grade-fixated drudge. So, for example, he has written a note for the Iowa Law Review, his note has been selected for publication, and for his senior year, he has been selected to be the Managing Editor of the Iowa Law Review. In the Van Oosterhout Baskerville Moot Court Competition, his brief took third place honors. His job as research assistant to Professor Emily Hughes has permitted him to explore his interests in criminal law.

In short, Mr. Favero has all the necessary intellectual abilities and skills to be a first-rate law clerk and lawyer, and I think he will also be a joy to have in your chambers. I recommend him highly.

Please do not hesitate to contact me if you have any further questions. I am on research leave this semester and not in my office, so if you want to call me, please call my cell phone at 319-333-9588.

Very sincerely yours,

John C. Reitz  
Edward L. Carmody Professor of Law  
Director of SJD and LLM Programs and Visiting Scholars

John C. Reitz - john-reitz@uiowa.edu - 319-335-9086

**Jared Favero**

926 Harlocke Street, Iowa City, IA 52246 | (636)-579-6096 | jared-favero@uiowa.edu

Attached is a 14-page excerpt of the team brief that I wrote as a 2L for the Van Oosterhout-Baskerville Moot Court Competition at the University of Iowa College of Law. To limit length, I have only provided a summarized statement of facts and my argument section.

The following are the relevant facts: Michael Lowrey was injured during a roadside altercation with a federal employee. Mr. Lowrey initially filed his FTCA claim in state court, but the Government removed the claim to federal court. The Government seeks the dismissal of the claim for lack of subject matter jurisdiction.

## ARGUMENT

**I. THE COURT SHOULD AFFIRM THE COURT OF APPEAL’S DENIAL OF THE GOVERNMENT’S MOTION TO DISMISS A FEDERAL TORT CLAIMS ACT SUIT FOR WANT OF SUBJECT MATTER JURISDICTION BECAUSE THE APPLICATION OF THE DERIVATIVE JURISDICTION IS INAPPROPRIATE.**

The Court of Appeals correctly denied the Government’s motion to dismiss Mr. Lowrey’s claim when it refused to apply the derivative jurisdiction doctrine to a case removed to federal court from a state court that had no jurisdiction; therefore, this Court should affirm. The derivative jurisdiction doctrine, in essence, is quite simple. Because federal courts on removal derive their jurisdiction from that of the state court, “[i]f the state court lacks jurisdiction of the subject-matter or of the parties, the federal court acquires none, although it might in a like suit originally brought there have had jurisdiction.” *Lambert Run Coal Co. v. Baltimore & O.R. Co.*, 258 U.S. 377, 382 (1922). Thus, the application of the doctrine requires attention to the state court’s subject matter jurisdiction. But it is the federal court’s jurisdiction—not the state court’s—that is paramount.

The federal judiciary “ha[s] exclusive jurisdiction of civil actions on claims against the United States . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment . . . .” 28 U.S.C. § 1346(b)(1). This statute grants jurisdiction over tort claims against the

federal government for the negligent acts of federal employees exclusively to the federal courts, meaning that a state court would lack subject matter jurisdiction over any action of this kind. For this reason, if a claim of this sort is erroneously brought in a state court, it may be removed to a federal district court. 28 U.S.C. § 2679(d)(2). “[A]ny civil action . . . commenced upon such claim in a State court shall be removed . . . to the district court of the United States for the district and division embracing the place in which the action . . . is pending.” *Id.* Congress contemplated that actions against the United States would occasionally be brought in the wrong forum, so this removal procedure was established to ensure that the federal district courts would hear the cases they have jurisdiction over.

But if the derivative jurisdiction doctrine were to be applied in all cases that were removed to federal court because the state court of origin lacked subject matter jurisdiction, the federal judiciary would be denied the ability to hear cases they would otherwise be able to. “[I]f Congress wanted a federal forum for suits involving the United States, as it clearly does, why should it matter that the state court in which the suit was originally commenced was without jurisdiction?” *North Dakota v. Fredericks*, 940 F.2d 333, 337 (8th Cir. 1991). This Court should find that it does not matter what the state court’s jurisdiction was. What matters is whether the federal district court has jurisdiction upon removal. In this case, Mr.

Lowrey's claim is within the jurisdiction of the federal courts pursuant to 28 U.S.C. § 1346.

The derivative jurisdiction doctrine is the “kind of rigmarole [that] is unworthy of a civilized judicial system.” *Fredericks*, 940 F.2d at 336. Congress recognized as much when it amended its general removal statute to no longer preclude federal courts from hearing removed claims with derivative jurisdiction defects. 28 U.S.C. § 1441(f). But even if the amendments to Section 1441 are not interpreted as a complete abrogation of the derivative jurisdiction doctrine, it nevertheless does not apply to Mr. Lowrey's case because its application either frustrates the purpose of waiver of sovereign immunity and removal or is limited to cases other than the present one.

**A. The Majority of the Courts of Appeals Have Limited the Amendments to 28 U.S.C. § 1441 to Removals Under That Section, Permitting the Derivative Jurisdiction Doctrine to Persist Under Other Removal Statutes, But It Should Not Persist for Removals Under 28 U.S.C. § 2679.**

The derivative jurisdiction doctrine is not a creation of Congress, “but rather a judicial gloss upon” the numerous removal statutes that have been implemented over the course of the nation's history. *Fredericks*, 940 F.2d at 336. Seeing the illogical outcomes that the doctrine forced upon the federal judiciary, Congress passed the Judicial Improvements Act of 1985 to “eliminate[] this arcane rule, so wasteful to finite judicial resources.” H.R. Rep. No. 99-423, at 13 (1985).

Expressly stated, the purpose of the amendment was “to abolish the present judicial rule that an improvidently brought state civil action, the subject matter of which is within the exclusive jurisdiction of a federal district court, must be dismissed when it is removed . . . .” *Id.* The amendment added a subsection (e) to Section 1441 stating “[t]he court to which such civil action is removed is not precluded from hearing a determining any claim in such a civil action because the State court form which such civil action is removed did not have jurisdiction over that claim.” Judicial Improvements Act of 1985, Pub. L. No. 99-336, 100 Stat. 633.

Several of the federal Courts of Appeals interpreted this amendment to be a complete abrogation of the derivative jurisdiction doctrine. In *North Dakota v. Fredericks*, the Eighth Circuit considered the application of the derivative jurisdiction doctrine to a case that was removed under 28 U.S.C. § 1444. *Fredericks*, 940 F.2d at 335–36. The Eighth Circuit saw Congress’s 1985 amendment to Section 1441 as a broad abrogation of the derivative jurisdiction doctrine and held that the doctrine, “as applied to defeat removals, should be abandoned completely.” *Id.* at 338. Other courts came to the same conclusion. *See, e.g., Hollis v. Florida State Univ.*, 259 F.3d 1295, 1298 (11th Cir. 2001) (finding that the derivative jurisdiction doctrine was nullified by the 1985 amendments); *Lloyd v. FDIC*, 22 F.3d 335, 336 n. 2 (1st Cir. 1994) (finding the “once settled” doctrine to have been repealed by Congress); *Baris v. Sulpicio Lines, Inc.*, 932

F.2d 1540, 1548 (5th Cir. 1991) (acknowledging the Congressional abolition of the derivative jurisdiction doctrine). Under these interpretations, the derivative jurisdiction doctrine was written out of not only Section 1441, but all removal statutes, meaning that claims improperly brought in state court could now be removed to federal court without issue. Such was Congress's purpose when abandoning the "improvident[]" doctrine. H.R. Rep. No. 99-423, at 13 (1985).

However, Section 1441 would receive another amendment that alters the reading of the derivative jurisdiction abolition. 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002). Currently, Section 1441's derivative jurisdiction doctrine provision reads as follows: "The court to which a civil action is removed *under this section* is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim." 28 U.S.C. § 1441(f) (emphasis added).

The federal Courts of Appeals are divided over how to interpret this new provision. Nearly two decades later, The Eighth Circuit has remained committed to its interpretation in *Fredericks*, reiterating that "a state law venue defect is not grounds for dismissal of a removed action." *St. Clair v. Spigarelli*, No. 08-2673, 2009 WL 3352014, at \*1 (8th Cir. 2009). In *Lopez v. Sentrillon Corp.*, the Fifth Circuit was faced with a case removed pursuant to 28 U.S.C. § 1442, "the federal



officer removal statute. . . .” *Lopez v. Sentrillon Corp.*, 749 F.3d 347, 348 (5th Cir. 2014). Sentrillon argued that the amendments to Section 1441 rendered the derivative jurisdiction doctrine inapplicable to removals under Section 1442. *Id.* at 350. The Fifth Circuit reasoned that Congress expressly limited the abrogation of the derivative jurisdiction doctrine to removals under Section 1441 with addition of the “under this section” language, thus preserving the doctrine for removals under other statutes. *See id.* at 351.

Other circuits have agreed with the Fifth Circuit’s interpretation. *See, e.g., Ricci v. Salzman*, 976 F.3d 768, 772 (7th Cir. 2020) (preserving the doctrine in Section 1442 cases); *Palmer v. City Nat’l Bank, of West Virginia*, 498 F.3d 236, 239 (4th Cir. 2007) (same). The Supreme Court has even “confirmed the applicability of the derivative-jurisdiction doctrine to cases removed under Section 1442.” 14C WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 3726 (4th ed.) (citing *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224 (2007)).

But Section 1442 removals are different than Section 2679 removals. Federal officials sued in their individual capacity may remove to a federal district court. 28 U.S.C. § 1442(a)(1). Federal employees sued for tortious acts while acting within the scope of their employment, do not remove their cases to federal court; the Attorney General certifies the scope of employment and removes the case, then substitutes the United States as defendant. 28 U.S.C. § 2679(d)(2).

“[T]he Attorney General’s ability to remove a suit to federal court under § 2679(d)(2), unlike a federal officer’s ability to remove under § 1442, [is not] controlled by the plaintiff’s allegations.” *Osborn v. Haley*, 549 U.S. 225, 249 (2007). The reasons for removal are almost entirely left up to the Attorney General. 28 U.S.C. § 2679(d)(2); *But see* 28 U.S.C. § 2679(d)(3) (allowing the federal employee to petition for certification if the Attorney General refuses).

In Section 2679 removals, the Attorney General stipulates to the federal question issue. Applying the derivative jurisdiction doctrine to Section 2679 removals would allow the United States to identify the matter giving rise to the federal court’s subject matter jurisdiction while simultaneously seeking to dismiss the case for want thereof. It would be inefficient and unjust to allow the Government to avail itself of the federal forum only to dismiss a valid claim, so the derivative jurisdiction doctrine should not apply to removals under Section 2679.

**B. The Court Should Abandon the Derivative Jurisdiction Doctrine Because It Frustrates the Purposes and Policies Behind the Waiver of Sovereign Immunity by the United States and Removal Statutes.**

The derivative jurisdiction doctrine is not a statutory mandate, and it should be abandoned. “[J]udge-made law is subordinate law.” Alan Watson, *The Future of the Common Law Tradition*, 9 DALHOUSIE L.J. 67, 80 (1984). In *Fredericks*, the Eighth Circuit cited an interpretive tool called “the equity of the statute.” *Fredericks*, 940 F.2d at 337. Essentially, this method deems the statute to be the

paramount expression of policy from which courts are to adopt and apply such policy absent a good reason. *Id.* “This principle enables ‘judges to distill from a statute its basic purpose,’ and they can ‘then employ it to slough off the archaisms in their own legal structure.’” *Id.* (quoting James M. Landis, *Statutes and the Sources of Law*, 2 HARV. J. ON LEGIS. 7, 8 (1965)). “The judge must interpret the statute; in other words, the statute is supreme. The supremacy in law of statute over judicial decision-making remains. . . .” Watson, at 80. Thus, the courts should look to the policy behind the statutes to remove any ancient judicial norms that conflict with the policy. The derivative jurisdiction doctrine is one such judicial norm that should be removed, as it conflicts with the policies behind the waiver of sovereign immunity and removal.

As sovereign, the United States is immune from suit unless it waives its immunity. *Hercules, Inc. v. United States*, 516 U.S. 417, 422 (1996). The United States has waived its immunity for certain tort claims against it. 28 U.S.C. § 1346. In actions for negligence caused by a federal employee acting within the scope of their employment, the United States has waived its immunity and granted exclusive jurisdiction to the federal district courts. *Id.* at § 1346(b)(1). The government has important reasons for waiving this immunity:

The primary purpose of the [FTCA] is to remove the sovereign immunity . . . from suits in tort and, with certain specific exceptions, to render the government liable . . . , thereby protecting federal

employees from personal liability . . . *while providing persons injured by these common law torts with an appropriate remedy against the United States.*

35A AM. JUR. 2D *Federal Tort Claims Act* § 7 (2020) (emphasis added) (footnote omitted). The FTCA was designed to subject the United States to liability rather than its employees, but more importantly, it was designed to give remedy to individuals injured by the tortious acts of government employees. Without such a waiver of immunity, private individuals would have no recourse.

The application of the derivative jurisdiction doctrine results in the exact scenario that the FTCA attempts to rectify. An individual may have a valid claim against the government, but the derivative jurisdiction doctrine would bar federal courts from reaching the merits because of a mistake of filing in a state court lacking jurisdiction. Where a judicial creation such as the derivative jurisdiction doctrine so clearly destroys the remedy that Congress intended to provide, the statutory purpose should prevail.

Aside from the issue of waiving sovereign immunity to allow suits from private citizens, the policy behind removal counsels in favor of abandoning the derivative jurisdiction doctrine. Once the federal government has exposed itself to legal action, “[t]he cardinal concern of the United States is that all cases in which the interest of the government are involved may be tried in federal fora.”

*Fredericks*, 940 F.2d at 338 (quoting *Hood v. United States*, 256 F.2d 522, 525

(9th Cir. 1958)). To affect this concern, Congress has enacted various removal statutes to allow the federal government to litigate in its own courts. *See* 28 U.S.C. § 1441 (general removal statute); 28 U.S.C. § 1442 (removal for suits against federal officers); 28 U.S.C. § 1443 (civil rights removal); *But see* 28 U.S.C. § 1445 (detailing a handful of nonremovable actions). Actions brought in a state court as a result of conduct described in Section 1346 are removed under Section 2679, placing them in front of the federal district courts. 28 U.S.C. § 2679(d)(2). Congress would not have enacted removal statutes if the jurisdiction of the state court were to be a continuous bar to federal court jurisdiction. *See Fredericks*, 940 F.2d at 337.

It is said that “the plaintiff is the master of their claim.” Debra Lyn Bassett & Rex. R. Perschbacher, *The Roots of Removal*, 77 BROOK. L. REV. 1, 2 (2011). But removal statutes run contrary to this principle, granting the defendant the sole right to remove. *See id.* at 4. The purpose of removal statutes is to remove a case from an improper forum and place it the proper one. *See id.* Section 2679(d)(2) does exactly that. When a suit is brought against a federal employee under the FTCA in a state court, the state court has no jurisdiction because it is statutorily conferred only to the federal district courts. 28 U.S.C. § 1346(b)(1). Thus, the United States may substitute itself as defendant and remove the case to the proper forum. 28 U.S.C. § 2679(d)(2).

This statute allows the Government to remove improperly filed actions, not defeat them. The federal employee that was being sued in the improper state court could have raised lack of subject matter jurisdiction as a defense. *See Fredericks*, 940 F.2d at 337. But the derivative jurisdiction doctrine would nullify any action improperly filed in a state court lacking subject matter jurisdiction that is subsequently removed to the appropriate district court. This outcome is undesirable for two reasons. First, it conflicts with the policy behind the waiver of sovereign immunity by denying the plaintiff remedy for their injuries because the claim was filed in the wrong forum, even if the claim made its way to the proper forum in an appropriate manner. Second, the derivative jurisdiction doctrine makes removal pointless. If Congress did not intend for FTCA claims filed in state court to be heard by the proper federal district court, why did they enact Section 2679? It would have been enough for Congress to enact Section 1346—granting exclusive jurisdiction over FTCA claims to the federal district courts—and leaving no procedures for removal. The outcome would be state courts rejecting claims based on lack of subject matter jurisdiction. Under the derivative jurisdiction doctrine or a scenario where there was no Section 2679 removal, improperly filed claims would be defeated either way. But Section 2679 removal exists, and it exists for reason: so FTCA claims can be adjudicated in the proper forum, not dismissed out of hand by the courts designed to hear them.

The conflict between the goals behind the statutory schemes for tort claims against the United States and the derivative jurisdiction doctrine should be resolved in favor of the statutes. “[I]f no distinct conflict exists between a statute and a rule, the court will apply the rule, unless the purpose of the statute would be so frustrated by an application of the rule that the rule and the statute must be deemed inconsistent.” 20 AM. JUR. 2D *Courts* § 50 (2020) (citing *In re Civil Commitment of Lonergan*, 811 N.W.2d 635 (Minn. 2012) (finding that the statute controlled when application of the court-made rule produced an inconsistent result)). The frustration caused by the derivative jurisdiction doctrine is apparent here, and the results given by the doctrine are inconsistent with the goals of the statutes. No remedy would exist for those plaintiffs who mistakenly filed in state court despite the United States rendering itself liable for certain actions. Removal is futile if the court upon removal is unable to hear the case before it even if that court is specifically designated by statute as the place for adjudication. The derivative jurisdiction doctrine should be abandoned in favor of the purposes underlying the statutes.

**C. If the Derivative Jurisdiction Doctrine Persists for Non-Section 1441 Removal Cases, the Seventh Circuit’s Holding in *Rodas v. Seidlin* Appropriately Limits the Doctrine to a Procedural Defect Rather Than an Element of Federal Subject Matter Jurisdiction.**

Should this Court not choose to abandon the derivative jurisdiction doctrine, its application should be properly limited. “The jurisdiction of the federal court on

removal is, *in a limited sense*, a derivative jurisdiction.” *Lambert Run*, 258 U.S. at 382. The Seventh Circuit took up the matter of the derivative jurisdiction doctrine’s limits in a case involving removal under Section 1442. *Rodas v. Seidlin*, 656 F.3d 610, 619 (7th Cir. 2011). *Rodas* involved “a removed tort suit by a patient who named as defendants a federally-funded clinic, its [employees], and alleged negligent mismanagement of her labor, resulting in the death of her child.”

WRIGHT & MILLER § 3726 (citing *Rodas*, 656 F.3d at 619). The Seventh Circuit found that the derivative jurisdiction doctrine still applied to removals under Section 1442 but determined it “is not an essential ingredient to federal subject matter jurisdiction.” *Rodas*, 656 F.3d at 619. The Seventh Circuit interpreted the doctrine as a “procedural bar” rather than a necessary element. *Id.* Thus, if “the district court would have had jurisdiction over a hypothetical complaint filed at the time it entered the judgement now under review, the fact that the state court lacked jurisdiction . . . has no significance.” *Id.*

The Seventh Circuit relied on two Supreme Court cases, *Grubbs v. General Elec. Credit Corp.* and *Caterpillar, Inc. v. Lewis*. *Id.* at 619–20. These two cases “distinguishe[d] between procedural defects in removal . . . and defects related to the Court’s subject matter jurisdiction.” *Id.* at 621. A procedural defect is curable, while the defect in jurisdiction is not. *See id.* at 624 (describing subject matter jurisdiction as “unyielding”). Therefore, “if the doctrine of derivative jurisdiction



constitutes a mere defect in the process by which a case reaches federal court, the [the] court may continue to exercise jurisdiction on appeal because the district court would have had original jurisdiction.” *Id.* at 621.

Relying on the language found in the case that gave rise to the doctrine at issue, the Seventh Circuit reiterated that the federal derivation of jurisdiction from state courts “is true only ‘in a limited sense.’” *Id.* at 622 (quoting *Lambert Run*, 258 U.S. at 382)). The Seventh Circuit also drew a distinction between the concepts of removal jurisdiction and subject matter jurisdiction, noting that “removal is not a kind of jurisdiction . . . Rather it is a *means* of bringing cases withing federal courts’ original jurisdiction into those courts.” *Id.* at 623 (emphasis in original) (quoting WRIGHT & MILLER § 3721). The Seventh Circuit counsels that the procedural defects caused by the derivative jurisdiction doctrine should be ignored if subject matter jurisdiction is proper when judgment is entered. *Id.*

The wisdom of *Rodas* should be applied to this case. Because the derivative jurisdiction doctrine is only a procedural defect, it is of no importance that the state court lacked subject matter jurisdiction if the case is properly removed to a federal court that does have the requisite jurisdiction. The Government removed the case to the District Court for the Western District of Hawkeye, a court with exclusive jurisdiction over Mr. Lowrey’s claims. To cure the defect, it is enough that Mr. Lowrey’s case found its way to the correct federal court.

## Applicant Details

First Name **Gemma**  
 Middle Initial **M**  
 Last Name **Fearn**  
 Citizenship Status **U. S. Citizen**  
 Email Address [gemma.fearn@richmond.edu](mailto:gemma.fearn@richmond.edu)

Address

|                              |
|------------------------------|
| Address                      |
| Street                       |
| <b>503 S DAVIS AVE APT 7</b> |
| City                         |
| <b>RICHMOND</b>              |
| State/Territory              |
| <b>Virginia</b>              |
| Zip                          |
| <b>23220</b>                 |
| Country                      |
| <b>United States</b>         |

Contact Phone Number **7728127204**

## Applicant Education

BA/BS From **University of Edinburgh, Scotland**  
 Date of BA/BS **June 2016**  
 JD/LLB From **University of Richmond School of Law**  
[http://www.nalplawsonline.org/content/OrganizationalSnapshots/OrgSnapshot\\_235.pdf](http://www.nalplawsonline.org/content/OrganizationalSnapshots/OrgSnapshot_235.pdf)  
 Date of JD/LLB **May 8, 2021**  
 Class Rank **10%**  
 Law Review/Journal **Yes**  
 Journal(s) **University of Richmond Law Review**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **Carrico Moot Court Competition**

## Bar Admission

## Prior Judicial Experience

Judicial  
Internships/       **Yes**  
Externships  
Post-graduate  
Judicial Law       **Yes**  
Clerk

## Specialized Work Experience

## Recommenders

Tobias, Carl  
ctobias@richmond.edu  
Webb, Laura  
lkhatche@richmond.edu

## References

The Honorable Robin L. Rosenberg  
United States District Judge  
United States District Court, Southern District of Florida  
Paul G. Rogers Federal Building and Courthouse  
701 Clematis Street  
West Palm Beach, FL 33401  
(561) 803-3430  
Robin\_L\_Rosenberg@flsd.uscourts.gov

Professor Carl Tobias  
Williams Chair in Law  
University of Richmond  
School of Law  
203 Richmond Way  
Richmond, VA 23173  
(804) 287-6440  
ctobias@richmond.edu

Kyle Felty, Esq.  
Law Office of Kyle Felty, P.A.  
1983 PGA Blvd., #103  
Palm Beach Gardens, FL 33408  
(561) 307-0500  
kyle@kylefelty.com

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

503 S. Davis Ave., #7  
Richmond, VA 23220

June 15, 2021

The Honorable Elizabeth W. Hanes  
United States District Court for the Eastern District of Virginia  
Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse  
701 East Broad St., 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am a recent graduate of the University of Richmond School of Law, and I am writing to apply for a judicial clerkship in the 2022–2024 term. After my clerkship with Judge Chambers in the Southern District of West Virginia, I hope to return to Virginia and begin my legal career in Richmond. I am specifically applying for a clerkship in your chambers because I would like to continue clerking, but at a magistrate level, to experience more of the federal system.

My academic background and anticipated experience as a clerk would make me a strong addition to your chambers. In law school, I earned the highest grades in Evidence, Criminal Law, and White Collar Crime. During my summer internship with Judge Rosenberg, I applied these skills and witnessed firsthand the complexities of federal litigation. I enjoyed the fast-paced federal docket and observed litigation on national security, cryptocurrency, and health care fraud. Working closely with Judge Rosenberg's clerks, I developed my writing skills by preparing documents ranging from draft orders to bench memoranda. In my internship at the Supreme Court of Virginia, I gained an appreciation of state appellate litigation and confirmed my interest in pursuing a clerkship.

I have continued to refine my writing and editing skills as a manuscript editor for the *University of Richmond Law Review*. Moreover, three different research assistant positions have given me an opportunity to research new and complex areas of law. Clerking at a district court in the coming year will enable me to become better acquainted with the federal system and to serve as a more effective law clerk.

Please find my application materials enclosed. Thank you for your consideration.

Respectfully,



Gemma Fearn

Enclosures

## GEMMA FEARN

503 S. Davis Ave., #7 • Richmond, VA 23220 • (772) 812-7204 • gemma.fearn@richmond.edu

### EDUCATION

**University of Richmond School of Law** **Richmond, VA**  
*Juris Doctor* May 2021

- GPA: 3.88 (8/135); received highest grade in Criminal Law, Evidence, and White Collar Crime
- *University of Richmond Law Review*, Manuscript Editor
- Moot Court Board, Semi-Finalist and Best Brief Winner
- Research Assistant: Professor Meredith J. Harbach (2020-2021), Professor Laura A. Webb (2019-2021), Law Library (2019-2020)
- Public Interest Law Association, Secretary (2019-2021)
- Carrico Center Pro Bono Certificate Recipient

**University of Edinburgh** **Edinburgh, Scotland**  
*Master of Arts History Honors, 2:1* (Bachelor of Arts equivalent) June 2016

- Undergraduate Vice Convenor (elected), School of History, Classics and Archaeology

### EXPERIENCE

**U.S. District Court for the Southern District of West Virginia** **Huntington, WV**  
*Judicial Clerk to the Honorable Robert C. Chambers* 2021-2022 Term

**Supreme Court of Virginia** **Richmond, VA**  
*Judicial Intern to the Honorable Stephen R. McCullough* May – August 2020

- Reviewed and made recommendations on petitions for discretionary review
- Drafted orders and memoranda on pending cases and for Model Jury Instructions Committee
- Attended writ panels and oral arguments, discussed appellate proceedings with clerks and Justice

**U.S. District Court for the Southern District of Florida** **West Palm Beach, FL**  
*Judicial Intern to the Honorable Robin L. Rosenberg* June – August 2019

- Researched substantive and procedural issues, including procedural requirements for *pro se* clients
- Drafted orders, memoranda, and case summaries, for Judge's use in ruling on motions
- Attended trials, motions hearings and sentencing hearings; discussed daily proceedings with Judge

**Law Office of Kyle Felty, P.A.** **Palm Beach Gardens, FL**  
*Paralegal* January – July 2018

- Drafted promissory notes and other contracts required for real estate law transactions

**Office of the State Attorney** **Stuart, FL**  
*Intern* September 2017 – January 2018

- Reviewed and prepared evidence for three trials and attended over 75 hours in court

**IES Diego Velazquez** **Madrid, Spain**  
*Language Assistant* October 2016 – June 2017

- Taught in 16 different classes at four grade levels including geography, history, and English

**Edinburgh University Students' Association** **Edinburgh, Scotland**  
*Bars Team Leader* July 2015 – September 2016

- Managed a team of nine at a specialty Scotch whisky bar during the International Fringe Festival

### ADDITIONAL INFORMATION

Language Skills: Proficient in Spanish (certified level B1 from Universidad Complutense de Madrid)

Interests: Travel (Japan and New Zealand), New Wave music, hiking

## How to Authenticate This Official PDF Transcript

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UNIVERSITY OF RICHMOND

Student No: \*\*\*-\*\*-1727

UR ID: 29006533

Date Issued: 03-JUN-2021

AEEE

Record of: Gemma M Fearn

Page: 1

Issued To: Gemma Fearn

Parchment DocumentID: 34598962

Course Level: Law

Only Admit: Fall 2018

Current Curriculum

Juris Doctor

College : School of Law

Major : Law

Events: Order of the Coif

Comments:

Rank in Class: 8/135; Top 10%

Degrees Awarded Juris Doctor 08-MAY-2021

Ehrs: 87.00 GPA-Hrs: 66.00 QPts: 256.10 GPA: 3.88

Degree Curriculum

College : School of Law

Major : Law

Inst. Honors: summa cum laude

SUBJ NO.

COURSE TITLE

CRED GRD

PTS R

Institution Information continued:

Fall 2019

LAW 599 EVIDENCE 4.00 A 16.00

LAW 603 CRIMINAL PROCEDURE:INVESTIGATN 3.00 A 12.00

LAW 631 CIVIL LITIGATION 3.00 A 12.00

LAW 785 DOMESTIC VIOLENCE SEMINAR 3.00 A- 11.10

LAW 598 TRIAL ADVOCACY 2.00 P 0.00

Ehrs: 15.00 GPA-Hrs: 13.00 QPts: 51.10 GPA: 3.93

Spring 2020

COVID-19 Pandemic.

SUBJ NO. COURSE TITLE

CRED GRD

PTS R

All courses graded Credit/No credit.

LAW 606 WILLS AND TRUSTS 4.00 CR 0.00

LAW 644 LABOR LAW 3.00 CR 0.00

LAW 669 THE ART OF THE ARGUMENT 3.00 CR 0.00

LAW 734 PROF RESPONSIBILITY:CRIM PRACT 2.00 CR 0.00

LAW 735 NATIONAL SECURITY LAW 2.00 CR 0.00

Ehrs: 14.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00

INSTITUTION CREDIT:

Fall 2018

LAW 513 CONTRACTS 4.00 B+ 13.20

LAW 514 TORTS 4.00 A 16.00

LAW 515 CIVIL PROCEDURE 4.00 A 16.00

LAW 517 LEGAL ANALYSIS & WRITING I 2.00 A 8.00

LAW 520 LEGAL RESEARCH I 0.00 S 0.00

Ehrs: 14.00 GPA-Hrs: 14.00 QPts: 53.20 GPA: 3.80

Spring 2019

LAW 503 CONSTITUTIONAL LAW 4.00 A 16.00

LAW 506 CRIMINAL LAW 3.00 A 12.00

LAW 516 PROPERTY 4.00 A 16.00

LAW 518 LEGAL ANALYSIS & WRITING II 2.00 A- 7.40

LAW 519 LEGISLATION AND REGULATION 3.00 A 12.00

LAW 521 LEGAL RESEARCH II 1.00 A 4.00

Ehrs: 17.00 GPA-Hrs: 17.00 QPts: 67.40 GPA: 3.96

Fall 2020

LAW 602 BUSINESS ASSOCIATIONS 4.00 A 16.00

LAW 629 EMPLOYMENT LAW 3.00 A- 11.10

LAW 687 WHITE COLLAR CRIME 3.00 A 12.00

LAW 699 JUVENILE JUSTICE 2.00 A- 7.40 I

LAW 699 WRITING FOR CLERKS 2.00 A- 7.40 I

Ehrs: 14.00 GPA-Hrs: 14.00 QPts: 53.90 GPA: 3.85

Spring 2021

LAW 601 PRE-TRIAL LITIGATION SKILLS 3.00 P 0.00

LAW 621 CONFLICT OF LAWS 3.00 A- 11.10

LAW 636 FEDERAL COURTS 3.00 A 12.00

LAW 730 SPANISH LEGAL SKILLS 2.00 P 0.00

\*\*\*\*\* CONTINUED ON NEXT COLUMN \*\*\*\*\* CONTINUED ON PAGE 2 \*\*\*\*\*

Kristen A. Ball, University Registrar



UNIVERSITY OF RICHMOND

Student No: \*\*\*-\*\*-1727

UR ID: 29006533

Date Issued: 03-JUN-2021

AEFF

Record of: Gemma M Fearn  
Level: Law

Page: 2

| SUBJ NO. | COURSE TITLE | CRED GRD | PTS R |
|----------|--------------|----------|-------|
|----------|--------------|----------|-------|

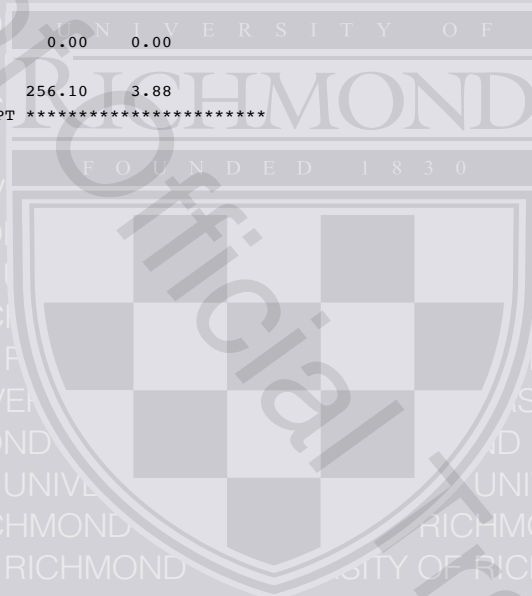
Institution Information continued:

|             |                         |             |           |
|-------------|-------------------------|-------------|-----------|
| LAW 748     | ADVANCED LEGAL RESEARCH | 2.00 A-     | 7.40      |
| Ehrs: 13.00 | GPA-Hrs: 8.00           | Qpts: 30.50 | GPA: 3.81 |

\*\*\*\*\* TRANSCRIPT TOTALS \*\*\*\*\*

|                   | Earned Hrs | GPA Hrs | Points | GPA  |
|-------------------|------------|---------|--------|------|
| TOTAL INSTITUTION | 87.00      | 66.00   | 256.10 | 3.88 |
| TOTAL TRANSFER    | 0.00       | 0.00    | 0.00   | 0.00 |
| OVERALL           | 87.00      | 66.00   | 256.10 | 3.88 |

\*\*\*\*\* END OF TRANSCRIPT \*\*\*\*\*



*K a Ball*

Kristen A. Ball, University Registrar

**OFFICE OF THE UNIVERSITY REGISTRAR  
UNIVERSITY OF RICHMOND, VIRGINIA 23173  
(804) 289-8639**

email: registrar@richmond.edu / website: www.registrar.richmond.edu

**COURSE CREDIT**

As of Fall 2008, the undergraduate divisions of the School of Arts and Sciences, the Robins School of Business and the Jepson School of Leadership Studies converted from semester hours to units. A 1-unit course is equivalent to 3.5 semester hours. For all other schools (and the above schools prior to Fall 2008), course credit is awarded on the semester hour system. Credit is determined by a variety of factors, including contact time with a faculty member in a formal setting and expectations of independent study work through a nominal 15-week semester.

**GRADING SYSTEM: since 1966**

|    |     |   |
|----|-----|---|
| A+ | 4.0 |   |
| A  | 4.0 | Excellent range   |
| A- | 3.7 |   |
| B+ | 3.3 |   |
| B  | 3.0 | Good range  |
| B- | 2.7 |   |
| C+ | 2.3 |   |
| C  | 2.0 | Average range   |
| C- | 1.7 |   |
| D+ | 1.3 |   |
| D  | 1.0 | Poor range  |
| D- | 0.7 |   |
| F  | 0.0 | Failure   |
| I  | 0.0 | Punitive Incomplete (make-up grade will appear to right of "I")     |
| M  | 0.0 | Withdrew Failing  |
| V  | 0.0 | Failure, excessive absence  |
| P  | —   | Pass  |
| S  | —   | Satisfactory, non-academic credit                                   |
| U  | —   | Unsatisfactory, non-academic credit                                 |
| W  | —   | Withdrew Passing  |
| X  | —   | Grade unavailable   |
| Y  | —   | Non-punitive Incomplete (make-up grade will appear to right of "Y") |
| Z  | —   | Audit   |
| TR | —   | Transfer  |

- Effective Fall 2008 and between Spring 1989 and Summer 1992, an approved undergraduate course taken for graduate credit is designated by a course number below the 500 level followed by a G.
- Prior to 1966 the 3.0 system was used, A=3 etc.
- Prior to Fall 1986, "0" designated failure for excessive absence, and except for Law, "+/-" did not affect the GPA. Prior to Fall 2002, "+/-" did not affect the GPA of Graduate Business students.
- Effective Summer 1992, graduate courses are transcribed separately from undergraduate courses.
- Prior to Summer 1992, courses numbered above the 400 level are graduate level unless otherwise indicated.
- Prior to Spring 1989, an approved undergraduate course taken for graduate credit is designated by a 400-level course number.

**THE T.C. WILLIAMS SCHOOL OF LAW**

- Effective Fall 2014, faculty policy provides for assignment of a mean grade of 3.3 in all classes.
- Prior to Fall 2014, faculty policy provides for assignment of median grades of B in all first-year classes.
- Prior to Fall 2001, faculty policy provides for assignment of median grades of B- in all first-year classes.
- Prior to Spring 1992, faculty policy provides for assignment of median and mode grades of C+ in all required classes.
- The law degree was the Bachelor of Laws (LLB) through 1969, Juris Doctor (JD) thereafter. LLB recipients have been given the option to exchange the LLB designation for the JD.
- Effective 2016: 87 hours required for graduation.
- 1993 - 2015: 86 hours required for graduation.
- 1973 - 1992: 90 hours required for graduation.
- 1942 - 1945: 80 hours required for graduation.
- 1975 - Pres: Grading scale outlined above except A+ and D- are not awarded.
- 1972 - 1975: D = 55 - 61, F = Below 55.
- 1938 - 1972: A = 80 - 100%, B = 70 - 79, C = 62 - 69, D = 60 - 61, E = 50 - 59, F = Below 50, with 84 hours required for graduation.

**COLLEGE/SCHOOL NAMES**

Prior to 1992, undergraduate liberal arts students were enrolled in and graduated from Richmond College or Westhampton College. Since Fall 1992, undergraduate students are enrolled in the School of Arts and Sciences, The E. Claiborne Robins School of Business, and the Jepson School of Leadership Studies. Richmond College and Westhampton College now serve as the undergraduate residential colleges.

Effective Fall 1994, the name of the University College changed to the School of Continuing Studies. Effective Fall 2012, the name of the School of Continuing Studies changed to the School of Professional and Continuing Studies.

**ACCREDITATION**

The University of Richmond is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to award associate, baccalaureate, masters, and juris doctor degrees. Contact SACSCOC at 1866 Southern Lane, Decatur, Georgia 30033-4097 or call (404) 679-4500 for questions about the accreditation of the University of Richmond. The University also is approved by the Virginia State Board of Education to offer teacher licensure programs. Various departments and divisions have more specialized accreditation. Included in this category are the chemistry program, accredited by the American Chemical Society; and the undergraduate teacher preparation programs and graduate certificate in teacher licensure program, accredited by the Teacher Education Accreditation Council. In addition, the Robins School of Business is accredited by the Association to Advance Collegiate Schools of Business International (AACSB) at the undergraduate and graduate levels, and the T.C. Williams School of Law is fully accredited by the recognized standardizing agencies in the United States, on the approved lists of the American Bar Association and a member of the Association of American Law Schools.

**REPEATED COURSES**

Repeated courses are noted to the right of the quality points earned for that course as follows:

|   |   |  |
|---|---|--|
| I | = | earned hours included; calculated in GPA     |
| A | = | earned hours excluded; calculated in GPA     |
| E | = | earned hours excluded; not calculated in GPA |

Consult the appropriate catalog for information on course repeat policies.

**TRANSCRIPT VALIDATION**

An official transcript is printed on secure paper with a blue background. When photocopied, the word COPY will appear. Further authentication may be obtained by calling the Office of the University Registrar.

**GRADE POINT AVERAGE CALCULATION**

The grade point average is calculated by dividing the total number of grade points earned by the total number of GPA hours. The grade point average is represented to two significant decimal points and truncated, not rounded. Transfer work does not calculate in the grade point average.

**CONTINUING EDUCATION UNITS (CEUs)**

The continuing education unit is used to recognize participation in non-credit classes, courses, and programs. The University of Richmond assigns CEU credit based on the SACS Commission on Colleges' document *C.E.U.: Guidelines and Criteria*. Such non-credit courses are designated as "CE" level and have an "M" or "N" attached to the course number. They are graded as satisfactory/unsatisfactory and cannot be used to satisfy any requirements in any degree program.

**RELEASE OF INFORMATION**

This transcript cannot be released to any third party without the written consent of the student in accordance with the Family Educational Rights and Privacy Act of 1974 (the Buckley Amendment). The message "Issued to Student" will be noted on the transcript when the transcript is provided directly to the student.

4/2/2020

HEAR Transcript

Date Produced: 02/04/2020

GEMMA FEARN S1231130



### **Information identifying the holder of the qualification**

Full Name: Gemma Fearn  
 Date of Birth: 2 October 1994  
 Matric / HUSID Number: S1231130 / 1211670110228

*(HUSID (HESA Unique Student Identifier) is the unique identifying number for students registered at a UK university. It is defined by the UK's Higher Education Statistics Agency)*

### **Information identifying the qualification**

Name of qualification and (if applicable) title conferred: Master of Arts with Honours; Second Class, Division 1

*(The power to award degrees is regulated by law in the UK.)*

Main field(s) of study for the qualification: History

Name and status of awarding institution: The University of Edinburgh

*(The University of Edinburgh is a recognised body granted powers by the Privy Council to award degrees.)*

Language(s) of instruction/examination: English

### **Information on the level of the qualification**

Level of qualification: SCQF level 10

Official length of programme: 4 Years

Access requirement(s): Detailed information regarding admission to the programme is available in the University's [Prospectus](#)

### **Information on the contents and results gained**

Mode of study: Full-time

Programme requirements: Information not available. Please contact relevant School using the details in 'Further Information Sources'

### **Information on the function of the qualification**

Access to further study:

Professional status (if applicable): Not applicable

### **Further Information Sources**

Further information sources: <http://www.ed.ac.uk/schools-departments/history-classics-archaeology>.

Any enquiries regarding the above should be addressed to: School of History, Classics and Archaeology, Doorway 4, Teviot Place, Edinburgh, EH8 9AG; Tele: +44 (0) 131 650 6693; Web: <http://www.shca.ed.ac.uk>; email: [shca@ed.ac.uk](mailto:shca@ed.ac.uk)

Further information regarding the University of Edinburgh HEAR: <http://www.ed.ac.uk/schools-departments/student-administration/other-info/overview>

This Higher Education Achievement Report incorporates the model developed by the European Commission, Council of Europe and UNESCO/CEPS for the European Diploma Supplement. The purpose of the report is to provide sufficient recognition of qualifications (diplomas, degrees, certificates etc). It is designed to provide a description of the nature, level, context and status of the

4/2/2020

HEAR Transcript

studies that were purposed and successfully completed by the individual named on the original qualification to which this report should be appended. It should be free from any value judgements, equivalence statements or suggestions about recognition. Information in all eight sections should be provided. Where information is not provided, an explanation should be given.

## **Programme details, and the individual grades/marks/credits obtained**

Programme Start Date: 17 September 2012

Qualification Conferred Date: 28 June 2016

Qualification Conferred: Master of Arts with Honours

Qualification Subject: History

Overall Classification of the Qualification: Second Class, Division 1

| Academic Year  | Code      | Name  | Mark | Grade | Result | SCQF Level | No. of attempts | Credits Achieved* |
|--|-----------|---|------|-------|--------|------------|-----------------|-------------------|
| 2012/13  | ECSH08026 | British Society, 1650-2000 (Social History 1)                         | 64   | B     | P      | 08         | 1               | 40                |
| 2012/13  | HIST08002 | European History 1  | 65   | B     | P      | 08         | 1               | 40                |
| 2012/13  | PLIT08004 | Introduction to Politics and International Relations                  | 65   | B     | P      | 08         | 1               | 20                |
| 2012/13  | PLIT08005 | Democracy in Comparative Perspective                                  | 63   | B     | P      | 08         | 1               | 20                |
| <b>Sub Total: 120</b>  |           |   |      |       |        |            |                 |                   |
| 2013/14  | ECSH08041 | Social History 2.2: The Making of the Modern Body                     | 66   | B     | P      | 08         | 1               | 20                |
| 2013/14  | ELCH07001 | Introductory Spanish Language   | 85   | A2    | P      | 07         | 1               | 20                |
| 2013/14  | ELCH07004 | Intermediate Spanish Language   | 74   | A3    | P      | 07         | 1               | 20                |
| 2013/14  | PLIT08006 | International Cooperation in Europe and Beyond                        | 58   | C     | P      | 08         | 1               | 20                |
| 2013/14  | SCHI08011 | Modern Scottish History   | 67   | B     | P      | 08         | 1               | 20                |
| 2013/14  | SCHI08012 | Scottish History since 1914   | 72   | A3    | P      | 08         | 1               | 20                |
| <b>Sub Total: 120</b>  |           |   |      |       |        |            |                 |                   |
| 2014/15  | CHCA10001 | History in Practice   | 65   | B     | P      | 10         | 1               | 20                |
| 2014/15  | CHCA10003 | History in Theory   | 63   | B     | P      | 10         | 1               | 20                |
| 2014/15  | ECSH10031 | Heritage in Britain since c.1750                                      | 67   | B     | P      | 10         | 1               | 20                |
| 2014/15  | HIST10072 | Gender and Society: Men and Women in the Middle Ages, 1000-1500       | 67   | B     | P      | 10         | 1               | 20                |
| 2014/15  | HIST10379 | Improving the Nation. Change and Modernisation in Scotland, 1660-1730 | 71   | A3    | P      | 10         | 1               | 20                |
| 2014/15  | HIST10383 | The White Man's Burden: Race, Gender and the Victorian Empire         | 70   | A3    | P      | 10         | 1               | 20                |
| <b>Sub Total: 120</b>  |           |   |      |       |        |            |                 |                   |
| 2015/16  | ECSH10070 | Youth and Modernity, c.1880-1970                                      | 73   | A3    | P      | 10         | 1               | 20                |
| 2015/16  | ECSH10083 | Madness and Society in Britain since c.1830                           | 68   | B     | P      | 10         | 1               | 20                |
| 2015/16  | HIST10309 | History Dissertation  | 64   | B     | P      | 10         | 1               | 40                |
| 2015/16  | HIST10390 | Culture and the Arts in Post-war Scotland                             | 67   | B     | P      | 10         | 1               | 40                |
| <b>Sub Total: 120</b>  |           |   |      |       |        |            |                 |                   |
| <b>* 1 European Credit Transfer Scheme (ECTS) credit = 2 University of Edinburgh credits</b> |           |   |      |       |        |            |                 | <b>Total: 480</b> |

## **Additional Information**

Prizes and Medals: None awarded

Additional Recognised Activities:

2015/16: Students' Association elected office bearer, History Classics & Archaeology Undergraduate School Vice Convener

Additional Notes: None recorded

Certification:



Lisa Dawson, Director of Student Systems and Administration

## **Grading Scheme**

4/2/2020

HEAR Transcript

Grade Expectations: [http://www.studentsystems.ed.ac.uk/staff/FAQ/assessment\\_results.html](http://www.studentsystems.ed.ac.uk/staff/FAQ/assessment_results.html)

Grades followed by 'A' = Fail (Credits Awarded on Aggregation)

Grades 'ES' & 'PS' = fail result of 38 or 39 but pass and credits awarded due to special circumstances

Grade CD = Course delivery disrupted, awarded on aggregate

## Common Marking Scheme from 2005/2006

With effect from Academic Session 2005/2006, the marking scheme for undergraduate degree examinations in all Schools is as follows, except for the Royal (Dick) School of Veterinary Studies and the M.B.,Ch.B. curriculum in the College of Medicine and Veterinary Medicine.

| HONOURS       |          | NON HONOURS |  |  |
|---------------|----------|-------------|--|--|
| Honours Class | Mark (%) | Grade       | Description  |  |
| I             | 90-100   | A1          | Excellent  |  |
| I             | 80-89    | A2          | Excellent  |  |
| I             | 70-79    | A3          | Excellent  |  |
| II.1          | 60-69    | B           | Very Good  |  |
| II.2          | 50-59    | C           | Performance at a level showing the potential to achieve at least a lower second class honours degree |  |
| III           | 40-49    | D           | Pass, may not be sufficient for progression to an honours programme                                  |  |
| Fail          | 30-39    | E           | Marginal Fail  |  |
| Fail          | 20-29    | F           | Clear Fail   |  |
| Fail          | 10-19    | G           | Bad Fail   |  |
| Fail          | 0-9      | H           | Bad Fail   |  |

## Bachelor of Veterinary Medicine and Surgery (BVMS), Royal (Dick) School of Veterinary Studies

70-100 = A (Excellent); 60-69 = B (Very Good); 55-59 = C (Good); 50-54 = D (Satisfactory); 46-49 = E (Marginal Fail); 35-45 = F (Clear Fail); 0-34 = G (Bad Fail)

BVMS is a Masters level degree and is not classified into any other GPA or similar system. Due to differences in examining systems, it is rare for students to receive a mark greater than 80% with 70% or greater equating to a distinction.

## Postgraduate Extended Common Marking Scheme (with effect from Academic Session 2005/2006)

| Mark (%) | Grade | Description  |
|----------|-------|--|
| 90-100   | A1    | An excellent performance, satisfactory for a distinction                         |
| 80-89    | A2    | An excellent performance, satisfactory for a distinction                         |
| 70-79    | A3    | An excellent performance, satisfactory for a distinction                         |
| 60-69    | B     | A very good performance  |
| 50-59    | C     | A good performance, satisfactory for a master's degree                           |
| 40-49*   | D     | A satisfactory performance for the diploma, but inadequate for a master's degree |
| 30-39**  | E     | Marginal Fail***   |
| 20-29    | F     | Clear Fail***  |
| 10-19    | G     | Bad Fail ***   |
| 0-9      | H     | Bad Fail***  |

\* Assessment of the dissertation: A mark of 47-49 may be used to denote the possibility that by minor revision the work may be upgraded to a Masters standard.

\*\* Assessment of the dissertation: A mark of 37-39 may be used to denote the possibility that by minor revision the work may be upgraded to a diploma standard.

\*\*\* Assessment of the dissertation: In those programmes where a diploma may be awarded for the taught component only, a failed dissertation may be put aside for the diploma.

## Information on the National Higher Education System

### Description of Higher Education in Scotland

Scotland's distinctive higher education system has 20 higher education institutions (HEIs). The 14 Universities, the Open University in Scotland, 2 colleges of higher education, 2 art schools and a conservatoire are part-funded for research, teaching and learning through the Scottish Funding Council.

The HEIs are independent, self-governing bodies, active in teaching, research and scholarship. They decide the degrees they offer; the conditions on which they are awarded and the admissions arrangements. Degrees and other higher education qualifications are legally owned by the awarding institution, not by the state. The HEIs offer qualifications at undergraduate (Bologna first cycle)

[https://www.star.euclid.ed.ac.uk/urdu/sits.urd/run/SIW\\_YGSL.start\\_url?AB6F740674F011EAwLj7du13pN5Sh8C856BDw9DpJmZISjDimOrCseeGAZoNtaAYvEVOn...](https://www.star.euclid.ed.ac.uk/urdu/sits.urd/run/SIW_YGSL.start_url?AB6F740674F011EAwLj7du13pN5Sh8C856BDw9DpJmZISjDimOrCseeGAZoNtaAYvEVOn...) 3/5

4/2/2020

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and postgraduate (Bologna second and third cycle) levels. In Scotland, the law distinguishes the power to award degrees on the basis of completion of taught programmes from the power to award research degrees. Universities have powers to award taught and research degrees. Some other HEIs have powers to award degrees while others offer programmes leading to degrees awarded by HEIs with degree powers.

Lists of institutions with powers toward degrees and institutions recognised by authorities in Scotland as being able to offer courses leading to a degree of another HEI may be found at (<http://www.universities-scotland.ac.uk>). A small number of degrees are available in colleges of further education by the authority of a duly empowered HEI.

#### Qualifications

The types of qualification awarded at the undergraduate (first cycle) and postgraduate level (second and third cycles) in Scotland are described in the Framework for Higher Education qualifications in Scotland which includes qualifications descriptors, developed with the higher education sector (<http://www.qaa.ac.uk>). The Framework is an integral part of a wider national framework: the Scottish Credit and Qualifications Framework that covers all forms of programmes and qualifications from School to Doctorates (see table 1 and <http://www.scqf.org.uk>). Institutions use SCQF credit points for students entering or transferring between programmes or institutions, and use ECTS for transfers within the European area.

#### Admission

Requirements for particular programmes are set by the HEIs which offer a range of routes for entry and/or credit transfer into their programmes, and admit students whom they believe have the potential to complete their programmes successfully. The Open University is an open entry institution. The most common qualification for entry to higher education is the Higher or Advanced Higher or, for entrants from the rest of the U.K., the General Certificate of Education at 'Advanced' level (including the "advanced supplementary") or comparable qualifications. Four or five Highers are normally taken in the 5th and 6th year of secondary school or at college or further education and studied in considerable depth, involving coursework and final examinations. Advanced Highers are taken in the 6th year. A major route into Degrees, often with transfer of credit, is the higher National Qualifications offered in colleges or further education.

#### Quality Assurance

Standards of qualification and the quality of the student learning experience are maintained by the HEIs using a range of processes including extensive use of external examiners. In some subject areas, Professional and Statutory Bodies have a role to ensure that programmes meet the needs and standards of the particular profession. HEIs in Scotland demonstrate their public accountability for quality and standards through a national quality and standards through a national quality assurance framework that has a strong focus on enhancement as follows: HEIs take account of a QAA published U.K.-wide code of practice for quality assurance, and U.K. subject level 'benchmark' statements on standards (see <http://www.qaa.ac.uk>). Subject level issues are addressed by HEIs internal reviews conducted in accordance with guidance issued by the Scottish Funding Council (SHEFC) (see <http://www.scf.ac.uk>). External reviews are conducted by the Quality Assurance Agency for Higher Education in Scotland (QAA). The Agency is an independent body established to provide public confidence in the quality and standards of higher education. It involves students in its quality enhancement activities. The Agency publishes reports on the outcomes of reviews and the confidence that can be placed in the HEIs' arrangements for assuring and enhancing standards and quality, and for ensuring that they provide public information that is complete, accurate and fair (see <http://www.qaa.ac.uk>). A national development service supports students in their role as active participants in assuring and enhancing quality and standards (see <http://www.sparqs.org.uk>).

**Table 1: The Scottish Credit and Qualifications Framework (SCQF)**

The SCQF covers all the major qualifications in Scotland from school to Doctorate and including work based Scottish Vocational Qualifications (SVQs)

| SCQF Level | Qualifications of Higher Education Institutions   | SQA Higher National and National Units, Courses and Group Awards | SVQs  |
|------------|---|--|-------|
| 12         | Doctoral Degrees<br>(Minimum 540 SCQF credits)  | -  | -     |
| 11         | Masters Degrees<br>(Minimum 180 SCQF credits)<br>Postgraduate Diploma<br>(Minimum 120 SCQF credits)<br>Integrated Masters Degrees<br>(Minimum 600 SCQF credits) | -  | SVQ 5 |
| 10         | Bachelors Degree with Honours<br>(Minimum 480 SCQF credits)<br>Graduate Diplomas and Certificates   | -  | -     |
| 9          | Bachelors Degree<br>(Minimum 360 SCQF credit)<br>Graduate Diplomas and Certificates   | -  | -     |
| 8          | Diploma of Higher Education<br>(Minimum 240 SCQF credits)   | Higher National Diploma  | SVQ 4 |
| 7          | Certificate of Higher Education<br>(Minimum 120 SCQF credits)   | Advanced Higher<br>Higher National Certificate                   | -     |
| 6          | -   | Higher   | SVQ 3 |
| 5          | -   | Intermediate 2<br>Credit Standard Grade                          | SVQ 2 |
| 4          | -   | Intermediate 1<br>General Standard Grade                         | SVQ 1 |
| 3          | -   | Access 3<br>Foundation Standard Grade                            | -     |
| 2          | -   | Access 2   | -     |
| 1          | -   | Access 1   | -     |

#### Notes

1. SCQF levels represent increasing complexity and demand in learning outcome.
2. One credit represents the outcomes achievable by the average through 10 notional hours of learner effort. In general terms, one full-time undergraduate year is considered to be 120 credits worth of learning. A postgraduate year is 180 credits. 1 ECTS credit is deemed equivalent to 2 SCQF credits. Research degrees - Master of Philosophy (MPhil) and Doctor of Philosophy (PhD) are not credit rated.
3. Graduate Certificates (minimum of 60 SCQF credits) and Graduate Diplomas (minimum of 120 credits) are offered at levels 9 and 10 within the SCQF framework. They are offered for programmes that are for graduates but do not have outcomes that are at postgraduate level.
4. The Bachelors Degree (level 9) leads to employment and in some instances can give access to postgraduate study particularly when accompanied by relevant work or professional experience.
5. At Postgraduate levels, the framework and the higher education qualifications are the same as those for the rest of the UK. The Honours Degree levels of the frameworks are considered to be in broad alignment (the Honours Degree in Scotland normally takes 4 years and that in the rest of the UK takes 3 years). Below Honours level the frameworks reflect the different educational structures of Scotland and the rest of the UK.
6. Scotland has a distinctive higher education system and also operates under a devolved government, including for higher education. There is a separate Description of Higher Education in England, Wales and Northern Ireland where the system is different to that of Scotland.
7. This national description is endorsed by the Quality Working Group which is a national committee with members from The Quality Assurance Agency for Higher Education, Scotland; The Scottish Funding Council; Universities Scotland and the National Union of Students in Scotland.

#### Description of the University of Edinburgh

The University of Edinburgh was founded in 1583, and has 22 Schools in 3 Colleges: Humanities and Social Science, Medicine and Veterinary Medicine and Science and Engineering. It offers more than 300 degree programmes to its approximately 29,000 students. It is one of around a hundred universities in the United Kingdom and of 14 in Scotland. Higher Education, including universities, within Scotland is the responsibility of the Scottish Parliament, which has powers devolved from the U.K. Parliament.

4/2/2020

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The University is an independent, self-governing body that is active in both teaching and research. Its mission is the advancement and dissemination of knowledge and understanding. (See [http://www.planning.ed.ac.uk/Strategic\\_Planning/MissionStatement.htm](http://www.planning.ed.ac.uk/Strategic_Planning/MissionStatement.htm) for fuller details of the University's mission and plan). Like all universities in the UK, its degrees are its own responsibility, not that of the State. The University is funded from a variety of sources, including a block grant from the Scottish government, academic fees, research grants, and other sources. About 4,500 students graduate every year with a Bachelors degree with honours and after four-years of study. For long-standing historical reasons, many degrees at this level in humanities subjects are designated Master of Arts. There are also some "undergraduate masters degrees" in science subjects that require five years of study and take students to a postgraduate level of achievement without their having achieved an intermediate bachelors degree. The outcome of these honours degrees is quoted in terms of the "classification" of the degree: first (the highest), upper second, lower second, or third. Some students graduate with a non-honours "ordinary" degree. which is not classified, although a transcript showing their marks is available. This system is common to all the universities in the UK.

About 2,000 students each year graduate with postgraduate degrees, generally designated as Master or Doctor. These degrees are not classified.

A document describing the similar systems in the rest of the UK is also available (see [http://www.uknec.org.uk/documents/ds\\_description.pdf](http://www.uknec.org.uk/documents/ds_description.pdf)).





June 11, 2021

The Honorable Elizabeth W. Hanes  
 United States District Court  
 Eastern District of Virginia  
 Spottswood W. Robinson III & Robert R. Merhige,  
 Jr., U.S. Courthouse  
 701 East Broad Street, 5th Floor  
 Richmond, VA 23219

Re: Judicial Clerkship Applicant Gemma Fearn

Dear Judge Hanes:

This is a letter of recommendation for Gemma Fearn who is applying to be a law clerk in your chambers starting during August 2022. On the basis of close professional and personal association with Ms. Fearn for the last three years, I give her my very strongest recommendation.

I first came to know Ms. Fearn when she was a first-year student in one of my torts sections in August 2018. From the start of the semester, Ms. Fearn was an active, willing and perceptive participant in class discussions. She always was well prepared, provided astute contributions and presented thought-provoking questions to her colleagues and me. Ms. Fearn displayed exceptional comprehension of the ideas that we addressed, and she was one of the best class participants among forty-eight quite accomplished students. She has maintained a 3.9 average in the very strong 2021 class. Mr. Fearn also earned the highest grades in her criminal law, evidence, and legal research and writing classes, acquiring skills that are crucial to excellent clerking.

Ms. Fearn has undertaken special efforts to improve her education. She was one of the first students to exhibit interest in securing challenging summer employment, in being a law review member and in clerking for a judge. Indeed, in summer 2019, Ms. Fearn interned with U.S. District Judge Robin Rosenberg on the Southern District of Florida, which is a busy court that resolves many complex matters. Last summer, Ms. Fearn interned with Virginia Supreme Court Justice Stephen McCullough. Those experiences improved her research, legal analysis and writing skills and her ability to work cooperatively on a judicial team in chambers. When Ms. Fearn clerks for Southern District of West Virginia Judge Robert Chambers starting in August, that experience will further enhance these attributes and prepare her well for an appellate clerkship.

Ms. Fearn has also been a great "citizen" of the law school, participating in many extracurricular activities here. For instance, during her second year, she was a staff member of the *University of Richmond Law Review* for which I serve as a faculty co-advisor. Ms. Fearn efficaciously fulfilled all of her duties. The journal elected Ms. Fearn as a Manuscripts Editor for the next year, and she professionally discharged that critical responsibility.

Ms. Fearn as well is a member of the Moot Court Board and serves as a Research Assistant, while she participates in the No Fault Divorce Pro Bono Program and the Pro Se Mediation Pro Bono Program. Her abilities compare very favorably with those of the best students whom I have taught at Georgetown and North Carolina.

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 203 Richmond Way  
 University of Richmond, VA 23173  
 law.richmond.edu



June 11, 2021

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Ms. Fearn has much native intelligence and an inquiring mind. She wrestles with challenging concepts and is never satisfied until she has completely mastered them. She carefully and meticulously works on legal issues that interest her. Ms. Fearn has excellent analytical skills. Her research and writing are comprehensive and clear, while she is extremely articulate in writing and verbally. Ms. Fearn is a "self-starter" who needs minimal guidance. She treats faculty, staff and her student colleagues with much consideration and respect. I find Ms. Fearn to have a wonderful sense of humor and to be very engaging, but she never takes herself too seriously.

In sum, Gemma Fearn has earned my very strongest recommendation. If you have questions about her or this letter, please call me at (804) 287-6440, or email me at [ctobias@richmond.edu](mailto:ctobias@richmond.edu). Thank you.

Sincerely,



Carl Tobias  
Williams Chair in Law

**Faculty**  
203 Richmond Way  
University of Richmond, VA 23173  
[law.richmond.edu](http://law.richmond.edu)



June 10, 2021

The Honorable Elizabeth W. Hanes  
 United States District Court  
 Eastern District of Virginia  
 Spottswood W. Robinson III & Robert R. Merhige,  
 Jr., U.S. Courthouse  
 701 East Broad Street, 5th Floor  
 Richmond, VA 23219

Re: Gemma Fearn Candidacy for Judicial Clerkship

Dear Judge Hanes:

It is my pleasure to recommend Ms. Gemma Fearn to you. I first met Ms. Fearn when she was a first-year student in the University of Richmond School of Law's Legal Analysis & Writing I-II class during the academic year 2018-19. Since that time, she has taken an upper-level class with me and served as my Research Assistant for two years.

I have had the pleasure to become well-acquainted with Ms. Fearn during her time at the Law School. Legal Analysis & Writing is a small class, with no more than thirty students in each section. Throughout each semester, I meet individually with each student on multiple occasions to discuss and provide feedback on writing assignments. In addition to their written assignments, I require the students to provide an oral update on their research and analysis during the spring semester. These assignments and meetings provide me with ample opportunity to understand and evaluate the skills, abilities, and attitudes of each student. Based on the strength of her work in the class, as well as a recommendation from my prior Research Assistant, I chose Ms. Fearn as my Research Assistant for summer 2019. Not only did she serve in this capacity over the summer, but she has continued in this role over the following two academic years. She was also my student in the upper-level class, Art of Argument, in the spring of 2020. I am very familiar with her work and abilities, and we have talked about her interest in judicial clerkships. As you will note from her resume, she has already served as a judicial intern in two courts and will begin a judicial clerkship after graduation with the U.S. District Court for the Southern District of West Virginia, assisting the Honorable Robert C. Chambers.

I am confident Ms. Fearn will be an excellent choice for your judicial clerk. Her grades and class rank attest to her strong intellectual abilities and work ethic. She is able to research, analyze, and communicate her analysis in an organized and effective manner, both verbally and in writing. Her work for me as a Research Assistant has been excellent. I find her to be responsible, diligent, and professional. Not only has she responded quickly and efficiently to my requests for research on a journal article published in 2020, she has also assisted me with class development. For example, she has essentially tested out a new summer class that I plan to teach in Cambridge, England (once health conditions permit). Ms. Fearn completed the planned readings and assignments and then provided feedback from a student perspective. This has allowed me to see where changes needed to be made. Her willingness to speak plainly and to respectfully disagree with a choice or course of action has been invaluable.

Today's young lawyers need more than excellent analytical and communication skills. They need a commitment to excellence, an awareness of their own strengths and challenges, and a desire to serve.

**Faculty**  
 203 Richmond Way  
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 law.richmond.edu

June 10, 2021

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Ms. Fearn displays all those attributes. She will be an asset to your chambers, and I recommend her without reservation.

Should you have questions regarding Ms. Fearn's performance in my classes, work as a Research Assistant, or potential for this position, please do not hesitate to contact me directly at lawebb@richmond.edu.

Sincerely,

A handwritten signature in cursive script that reads "Laura A. Webb".

Laura A. Webb  
Professor of Law, Legal Practice

**Faculty**  
203 Richmond Way  
University of Richmond, VA 23173  
law.richmond.edu

**GEMMA FEARN**

503 S. Davis Ave., #7  
Richmond, VA 23220  
gemma.fearn@richmond.edu  
(772) 812-7204

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**WRITING SAMPLE**

I prepared this brief in support of a motion to dismiss for my 2L Art of the Argument persuasive writing course. The brief argues that the ADEA does not permit subgroup disparate impact claims (*e.g.*, where employees over fifty are adversely affected but the statutorily protected group of people over forty is not).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**MARILYN GOSS, on behalf  
of herself and all others  
similarly situated**

PLAINTIFF,

V.

**SUNNYVALE WIDGET LLC**

DEFENDANT.

**CASE NO. XX-XXXX**

**BRIEF OF DEFENDANT IN SUPPORT OF THE  
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

## INTRODUCTION

This Court should grant the defendant’s motion to dismiss for failure to state a claim because disparate impact subgroup claims are not cognizable under the Age Discrimination in Employment Act (“ADEA”). At issue here is whether the ADEA allows disparate impact claims to be made on behalf of subgroups within the class (*e.g.*, where employees over fifty are adversely affected but the statutorily protected group of people over forty is not). Because it does not, Plaintiff does not have an actionable claim under the ADEA.

Plaintiff cannot make a claim under the ADEA because the statute does not provide protection for subgroups by its very terms, as is evident from circuit court precedent, nor was it intended to do so. The impact of such an extensive basis for liability on employers would be too far-reaching. Therefore, the District Court for the Eastern District of Virginia should grant Sunnyvale's motion to dismiss for failure to state a claim because subgroup disparate impact claims are not cognizable under the ADEA.

### **STATEMENT OF FACTS**

Like many businesses, Sunnyvale Widget Factory (“Sunnyvale”) has had to make difficult decisions to remain profitable and keep up in an increasingly competitive international market. Sunnyvale, located in Rosslyn, Virginia, manufactures widgets. Compl. ¶ 2. In July 2019, factory management made the difficult decision to reduce the number of salaried employees to make the factory more efficient and profitable. Compl. ¶ 19.

After hiring an outside consulting group to conduct research and provide analyses on the best way to achieve these goals, the Sunnyvale CEO concluded that it should be possible to increase productivity by fifteen percent by reducing the number of salaried middle-management employees by twenty-five percent. At the time, Sunnyvale employed 500 salaried employees, so a sizeable reduction of employees would be necessary to ensure the business could continue to remain profitable and provide jobs in the local community.

The next month, after this exhaustive analysis, upper-level management began a detailed assessment process to determine which employees to retain. Compl. ¶ 19. The assessment process was based on five objective factors and three subjective factors. Compl. ¶ 20. Those employees with the lowest scores were terminated: 123 in total. Compl. ¶¶ 20-21. The downsizing process resulted in an overall retention rate of 42.7% for employees over the age of fifty. Compl. ¶ 23. It resulted in an 80.3% rate of those under fifty. *Id.* There is no information available on the impact of the downsizing process on the group of employees over the age of forty. The downsizing process included termination of some long-term employees such as Plaintiff, who was over fifty. Compl. ¶ 18. Plaintiff holds precisely one of the middle-management positions the company had to eliminate and was terminated based on the objective assessment policy. Compl. ¶ 16.

Plaintiff filed her charge in the District Court for the Eastern District of Virginia alleging that Sunnyvale's terminations violated the ADEA because they had a disparate impact on a subgroup of employees aged fifty and above. Compl. ¶¶ 28-31. Sunnyvale has filed this motion to dismiss for failure to state a claim in the District Court for the Eastern District of Virginia.

### **ARGUMENT**

To avoid dismissal under Rule 12(b)(6), Plaintiff must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). This requires more than mere assertions; the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Id.*

The ADEA protects the class of employees aged forty or over from discriminatory employment policies in the workplace. 29 U.S.C. § 623(a). Employees can proceed on a claim of disparate treatment, which involves intentional discriminatory acts. *Id.* at (a)(1). Employees can also, or alternatively, pursue claims of disparate impact, where employer policies lack discriminatory intent, but nevertheless benefit a particular group. *Id.* at (a)(2); *Smith v. City of Jackson*, 554 U.S. 228 (2005). To establish a prima facie claim of disparate impact the plaintiff must: (1) identify a specific employment practice that is allegedly discriminatory; and then (2) present "statistical evidence of a kind and degree sufficient to show that the practice in question caused" the plaintiff to suffer an adverse employment action. *Watson v. Fort Worth Bank and Tr.*, 487 U.S. 977, 994 (1988).

Here, Plaintiff has failed to establish the second prong of the analysis. She has alleged a discriminatory employment practice. However, she has not presented sufficient statistical evidence to show that she suffered an adverse employment action because of her membership in the ADEA's

protected group of employees over forty. Indeed, Plaintiff has failed to present any evidence showing how Sunnyvale's downsizing process impacted the group of employees over forty.

Plaintiff cannot prevail on the evidence she has presented because subgroup claims are not cognizable. The plain text of the statute itself does not authorize subgroup claims. *See* 29 U.S.C. § § 621 *et seq.* (2018). It allows only for disparate impact claims where policies have an adverse impact on ADEA-protected workers (those aged forty or above). Plaintiff's interpretation of the statute forces employers to consider age in a way that is contrary to Congressional intent in enacting the statute. Allowing disparate impact claims for subgroups would also require employers to do the impossible: ensure that each employment decision is equally fair to each subgroup of workers over the age of forty. Because Plaintiff cannot make a subgroup disparate impact claim, her claim fails as a matter of law and should be dismissed with prejudice.

**I. The ADEA's plain text does not permit subgroup disparate impact claims.**

The ADEA explicitly limits its provisions against unlawful discrimination. "The prohibitions in this Act shall be limited to individuals who are at least forty years of age." 29 U.S.C. § 631(a). For those over forty, the ADEA makes it unlawful for an employer to:

- (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges or employment, because of such individual's age
- (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's age.

29 U.S.C. § 623(a)(1)-(2).

On its face, the statute prohibits employers from taking an employment action because of an individual's age, when that age is over forty. The comparison must be between the group of employees over the age of forty and those under the age of forty, because the statute does not



otherwise provide. *See Watson*, 487 U.S. at 994 (recognizing that the disparate impact plaintiffs “must offer statistical evidence of a kind and degree sufficient to show that the practice in question has caused the exclusion of applicants for jobs or promotions because of their membership *in a protected group*.”) (emphasis added).

Therefore, plaintiffs can only show disparate impact where the evidence reveals they were discriminated against as protected employees under the ADEA. *See Lowe v. Commack Union Free School District*, 886 F.2d 1364, 1373 (2d Cir. 1989) (the focus is “not on the individual plaintiff as much as on the adverse effect of the challenged practice *on the protected group* of which the plaintiff is a member”); *Smith v. Tenn. Valley Auth.*, 1991 U.S. App. LEXIS 1754 at \*12 (6th Cir. Feb. 4, 1991) (“A plaintiff cannot succeed under a disparate impact theory by showing that younger members of the protected class were preferred over older members of the protected class.”). Plaintiff has not done so here.

## **II. Congress did not intend for subgroup disparate impact claims to be cognizable because age is uniquely correlated to other employment criteria.**

Even when recognizing that disparate impact claims under the ADEA could go forward, the Supreme Court emphasized the narrow scope of disparate impact liability in the context of age discrimination. *See City of Jackson*, 544 U.S. at 240. The Court noted that Congress’s decision to limit the coverage of the ADEA was at least in part due to the fact that “age, unlike race or other classifications protected by Title VII, not uncommonly has relevance to an individual’s capacity to engage in certain types of employment.” *Id.* It was therefore unsurprising that “certain employment criteria that are routinely used may be reasonable despite their adverse impact on older workers as a group.” *Id.* The Court reaffirmed that disparate treatment, not disparate impact, “captures the essence of what Congress sought to prohibit in the ADEA.” *Id.* at 238.

Ignoring this mandate and allowing a broad theory of liability would allow claims to be brought by almost any infinite subgroup of workers over the age of forty. Circuit courts have disfavored this approach because Congress did not “intend[] to impose liability on employers who rely on such criteria just because their use had a disparate impact on a subgroup.” *EEOC v. McDonnell Douglas Corp.* 191 F.3d 948, 951 (8th Cir. 1999). *See Lowe*, 886 F.2d at 1373 (2d Cir. 1989) (recognizing that Congress has explicitly provided those over forty to be the protected group under the ADEA because otherwise “any plaintiff can take his or her own age as the lower end of a sub-protected group” and make a disparate impact argument.”); *Tenn. Valley Auth.*, 1991 U.S. App. LEXIS at \*12.

In *McDonnell Douglas*, disparate impact on a subgroup did not give rise to cognizable claims because the company “relied on criteria such as retirement eligibility, salary, and seniority in making its layoff decisions.” 191 F.3d at 951. Like the employer who was not liable, *McDonnell Douglas*, Sunnyside used other objective criteria during its assessment process to reduce middle-management employees. This might well affect slightly older people because it typically takes years to rise through the ranks to become a middle-management employee. Congress could not have intended to impose liability where a business decision based on objective criteria with a good-faith basis indirectly affects some slightly older groups more than others. *See id.*

Allowing subgroup claims to proceed would actually have “the anomalous result of forcing employers to take age into account in making layoff decisions, which is the very sort of age-based decision-making that the statute proscribes.” *Id.* The subgroup claim theory would therefore encourage precisely the type of behaviors the statute seeks to eliminate. *See Hazen Piper Co. v. Biggins*, 507 U.S. 604, 612 (1993) (explaining that the ADEA “requires the employer to ignore an

employee's age"); 29 U.S.C. § 621(b) ("It is therefore the purpose of this Act . . . to prohibit *arbitrary* age discrimination in employment.") (emphasis added).

**III. Requiring employers to consider the impact of business decisions on every subgroup of older workers is unduly burdensome.**

Plaintiff's theory makes it unlawful for an employer to apply any neutral policy, practice, or decision having an adverse impact on any number of infinite subgroups of older workers (such as those aged forty-five to forty-eight, or those aged sixty-five or older). Further, if age-based subgroup discrimination claims were cognizable, a plaintiff could allege discrimination "despite the fact that the statistical evidence indicated that an employer's reduction in force had a very favorable impact upon the entire protected group of employees aged forty and over, compared to those outside the protected group." *McDonnell Douglas*, 191 F.3d at 951.

If disparate impact subgroup claims were cognizable, any employer engaging in a reduction in force or other practical business decision would face impossibly high demands. As the Eighth Circuit recognized, "the consequence would be to require an employer engaging in a RIF [reduction-in-force] to attempt what might well be impossible: to achieve statistical parity among the virtually infinite number of age subgroups in its work force." *Id.* at 950. Other courts have recognized the scope of this problem. *See Lowe*, 886 F.3d at 1373 ("If [a subgroup claim] approach were to be followed, an eighty-five year old plaintiff could seek to prove a discrimination claim by showing that a hiring practice caused a disparate impact on the 'subgroup' of those age eighty-five and above, even though all those hired were in their late seventies."). Here, for example, Plaintiff attempts to show an age disparity for workers aged fifty and older, but there is no evidence of adverse impact on the group of those aged forty and older. Indeed, the forty to fifty age group could have been greatly favored. Such a contrary outcome defies the logic of the ADEA.

Rejecting subgroup disparate impact claims as unworkable would not preclude a plaintiff from prevailing on a disparate treatment claim of intentional discrimination. The proper way to address the possible harm is through disparate treatment claims, not disparate impact claims. *See City of Jackson*, 554 U.S. at 230.

### **CONCLUSION**

Plaintiff's theory would ask this Court to ignore the narrow scope of the disparate impact cause of action under the ADEA and instead advance a theory that would allow claims to be brought on behalf of seemingly infinite subgroups of older workers. This approach is not mandated by the text of the ADEA itself. Nor did Congress aim, in passing the ADEA, to create a cause of action for every single subgroup of workers.

Employers would be faced with an impossible burden of accommodating every subgroup of workers over forty and ensuring parity across the board any time it undertook a new business decision, practice, or policy. This would force employers to actively consider age, which is the exact opposite of what employers are required to do under the ADEA. That requirement is inherently contrary to the ADEA's primary goal of removing age as a factor in employment decisions. This interpretation leaves employers with an insurmountable burden in their daily business operations. Therefore, this Court should dismiss the Plaintiff's action for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

SUNNYVALE WIDGET LLC

By: \_\_\_\_\_/s/ *Ron Bloofendorger*

Counsel  
**BLOOFENDORGER & HAMILTON PC**  
1235 E. Main Street, Ste 500  
Richmond, Virginia 23235

(804) 555-5555  
rbloofend@bhpc.com

**Applicant Details**

First Name **Jennifer**  
 Middle Initial **P**  
 Last Name **Ferentz**  
 Citizenship Status **U. S. Citizen**  
 Email Address [jferentz@law.fordham.edu](mailto:jferentz@law.fordham.edu)

Address **Address**  
**Street**  
**560 W 151st Street #B2**  
**City**  
**New York**  
**State/Territory**  
**New York**  
**Zip**  
**10031**  
**Country**  
**United States**

Contact Phone Number **917-699-7171**

**Applicant Education**

BA/BS From **Johns Hopkins University**  
 Date of BA/BS **May 2014**  
 JD/LLB From **Fordham University School of Law**  
[https://www.fordham.edu/info/29081/center\\_for\\_judicial\\_engagement\\_and\\_clerkships](https://www.fordham.edu/info/29081/center_for_judicial_engagement_and_clerkships)  
 Date of JD/LLB **May 22, 2021**  
 Class Rank **I am not ranked**  
 Law Review/Journal **Yes**  
 Journal(s) **The Fordham Urban Law Journal**  
 Moot Court Experience **No**

**Bar Admission**

## Prior Judicial Experience

Judicial  
Internships/           **No**  
Externships  
Post-graduate  
Judicial Law           **No**  
Clerk

## Specialized Work Experience

## Recommenders

Davidson, Nestor  
ndavidson@fordham.edu  
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## References

Name: Bethany Perskie  
Title: Deputy General Counsel  
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Phone: (212) 409-1861  
Email: BPerskie@nyccfb.info  
Relationship: Supervising Attorney for summer legal internship at the  
Campaign Finance Board

Name: Perry Grossman  
Title: Senior Staff Attorney, Adjunct Professor at the Fordham  
University School of Law  
Organization: New York Civil Liberties Union  
Phone: 718-791-9060  
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Relationship: Supervising Attorney for the Voting Rights Project at the  
New York Civil Liberties Union

Name: Matthew Diller  
Title: Dean  
Organization: Fordham University School of Law

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Email: diller@law.fordham.edu

Relationship: Mentor

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**



Jennifer Ferentz  
560 W. 151st Street #B2  
New York, NY 10031

August 23, 2020

Honorable Elizabeth Hanes  
Magistrate Judge  
United States District Court  
for the Eastern District of Virginia  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
United States Courthouse  
701 East Broad Street, 5th Floor  
Richmond, Virginia 23219

Dear Judge Hanes:

I am a third year law student at the Fordham University School of Law where I am a Notes and Articles Editor for the Fordham Urban Law Journal. I am respectfully applying for the clerkship with your chambers for the 2021–2023 term or any term thereafter. As my aunt has lived in Virginia for many years — previously in Richmond and currently in Portsmouth — I have visited her at least once per year since I was in middle school and would welcome being closer to her on a longer-term basis. It is my intention to relocate to the Richmond area and the opportunity to clerk in Virginia would be an invaluable chance to serve the legal community.

As a fellow in the Stein Scholars Program in Public Interest Law & Ethics, I am deeply committed to public service and intend to work in public interest throughout my legal career. My note entitled “Officer Use of Force and the Failure of Oversight of New York City’s Jails” will be published in the Fordham Urban Law Journal this upcoming October; I undertook this writing project to bridge my experience working with incarcerated people in New York City jails with my interest in governance and administrative law. I am also passionate about voting rights and the democratic process and have been excited to be a legal intern with the New York City Campaign Finance Board, serving in a local government agency created to bring transparency to municipal elections. Previously as an intern with the New York Civil Liberties Union in their Voting Rights Project, I also had the opportunity to engage in original research and strategy under the framework of Section 2 of the Voting Rights Act. There, I was struck by the power of impact litigation, and hope to pursue this type of work in the future. Further, I have always been grounded by my time serving those in need, getting hands-on experience in legal services with the Prisoners’ Rights Project at the Legal Aid Society of New York and serving as a case manager for a supportive housing program for formerly homeless individuals during an AmeriCorps year of service after I graduated from college. Finally, as I sought to pursue law after working in the non-profit sector and at a small law firm, I recognize the importance of contributing positively to a close-knit office environment.

Included in my application please find my resume, unofficial law school transcript, writing sample, and list of references. Under separate cover, please find letters of recommendation from

Professor Aaron Saiger (asaiger@law.fordham.edu, 646-678-1351) and Professor Russell Pearce (rpearce@law.fordham.edu, 212-636-6834). Thank you for your kind consideration of my candidacy.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'JF', with a stylized flourish at the end.

Jennifer Ferentz

# JENNIFER PIA FERENTZ

560 W. 151st Street #B2, New York, NY 10031  
jferentz@law.fordham.edu | (917) 699-7171

## EDUCATION

### FORDHAM UNIVERSITY SCHOOL OF LAW, New York, NY

J.D. Candidate, May 2021

G.P.A.: 3.43 (G.P.A. of 3.44 = Approximate Top 33%)

Honors: *Fordham Urban Law Journal*, Notes and Articles Editor  
Stein Scholars Program in Public Interest Law & Ethics; Student-Elected Representative for the 3L Stein Cohort

Publication: Note, *Officer Use of Force and the Failure of Oversight of New York City's Jails*, 47 FORDHAM URB. L.J. (forthcoming 2020)

### THE JOHNS HOPKINS UNIVERSITY, Baltimore, MD

B.A. with Honors, Sociology, Theatre Arts & Studies, 2014

G.P.A.: 3.85

Honors: Phi Beta Kappa; Alpha Kappa Delta (International Honor Society of Sociology); Dean's List, 5 semesters

Activities: Writing Center Tutor, 4 semesters (paid); A Place To Talk (student-to-student peer listening group), Co-Recruitment Chair and Active Listening Trainer

## EXPERIENCE

### NEW YORK CITY CAMPAIGN FINANCE BOARD, New York, NY

June 2020 – August 2020

*Legal Intern*

- Supported the Legal Unit in the administration of New York City's public campaign finance program, engaging mostly in comparative research on program requirements in different municipalities.
- Drafted enforcement documents for service to participating campaigns.
- Analyzed and distilled relevant case law for a comprehensive survey of campaign finance jurisprudence.

### VOTING RIGHTS PROJECT, NEW YORK CIVIL LIBERTIES UNION, New York, NY

Jan. 2020 – May 2020

*Legal Intern*

- Conducted original factual investigation into potential systemic voter-discrimination and dilution of minority votes within a Long Island school district. Analyzed demographic data, voter-turn-out data, and patterns of residential segregation. Interviewed community leaders, school board officials, and former teachers and students.
- Researched background case-law, with emphasis on litigation arising under Section 2 of the Voting Rights Act.
- Drafted pre-litigation memorandum summarizing findings and proposing strategy for litigation and policy solutions.

### PRISONERS' RIGHTS PROJECT, THE LEGAL AID SOCIETY, New York, NY

May 2019 – Aug. 2019

*Legal Intern*

- Interviewed clients incarcerated in New York City jails, in person and over the phone. Advocated with emails and letters, primarily regarding health and safety concerns, as well as submitting detailed reports of assaults, to the Department of Corrections (DOC).
- Conducted legal research on Eighth and Fourteenth Amendment civil rights claims related to conditions of confinement for incarcerated individuals.
- Analyzed data gathered through litigation concerning use of force by DOC staff.

### THE PAROLE PREPARATION PROJECT, New York, NY

Sept. 2016 – Dec. 2018

*Volunteer Advocate*

- Advocated for a person serving a long-term sentence, providing assistance during the parole process by gathering documentation of support, connecting him to services, planning for his release, and communicating with his family and prison staff. Provided ongoing post-release support.
- Attended monthly volunteer meetings and gave occasional administrative support to the organization.

### SARETSKY, KATZ & DRANOFF, L.L.P., New York, NY

Jan. 2017 – June 2018

*Paralegal*

- Supported attorneys throughout civil litigation by preparing and serving discovery demands, correspondence, and motions, by arranging expert discovery and written reports, and by reviewing and preparing files for upcoming trials.
- Bluebooked and cite checked briefs using Westlaw. Proofread letters to clients and other documents as assigned.
- Assisted office manager and receptionist in day-to-day office functions.
- Managed recruiting, interviewing, and hiring new support staff for the firm.

**Jennifer Ferentz**  
**Fordham University School of Law**  
**Cumulative GPA: 3.429**

**Fall 2018**

| COURSE                 | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|------------------------|------------|-------|--------------|----------|
| Legal Process          |            | P     | 1.00         |          |
| Contracts              |            | A-    | 5.00         |          |
| Legal Writing/Research |            | IP    | 2.00         |          |
| Civil Procedure        |            | B+    | 4.00         |          |
| Criminal Law           |            | B+    | 3.00         |          |

**Spring 2019**

| COURSE                   | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|--------------------------|------------|-------|--------------|----------|
| Legislation & Regulation |            | A-    | 4.00         |          |
| Torts                    |            | B     | 4.00         |          |
| Property                 |            | B+    | 4.00         |          |
| Legal Writing/Research   |            | B+    | 3.00         |          |
| Constitutional Law       |            | B+    | 4.00         |          |

**Summer 2019**

| COURSE                                      | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|---|------------|-------|--------------|----------|
| Clinical Externship: Stein Scholars         |            | P     | 2.00         |          |
| Clinical Externship: Stein Scholars Seminar |            | A-    | 1.00         |          |

Enrollment in this 3 credit course (2 credit fieldwork and 1 credit seminar) is a requirement of the Stein Scholars fellowship.

**Fall 2019**

| COURSE   | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|--|------------|-------|--------------|----------|
| Writing Requirement                              |            | S     | 0.00         |          |
| Administrative Law                               |            | B+    | 4.00         |          |
| Independent Study                                |            | CR    | 2.00         |          |
| Professional Responsibility: Lawyers and Justice |            | A-    | 3.00         |          |
| Employment Discrimination                        |            | A-    | 3.00         |          |

**Spring 2020**

| COURSE                            | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-----------------------------------|------------|-------|--------------|----------|
| Information Privacy Law           |            | P     | 2.00         |          |
| Externship: Voting Rights Seminar |            | P     | 1.00         |          |
| Corporations                      |            | P     | 4.00         |          |

|                                     |   |      |
|-------------------------------------|---|------|
| Externship: Voting Rights Fieldwork | P | 2.00 |
| Fundamental Lawyering Skills        | P | 3.00 |

Grades are not included in GPA due to the coronavirus.

#### Fall 2020

| COURSE  | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|---|------------|-------|--------------|----------|
| Federal Courts                                      |            |       | 4.00         |          |
| Urban Law Journal Editors                           |            |       | 2.00         |          |
| Constitution, Presidency, Law and National Security |            |       | 2.00         |          |
| Income Taxation                                     |            |       | 4.00         |          |

In progress.

#### Grading System Description

The Law School does not calculate class rankings.

Grade Scale for the Juris Doctor (J.D.):

A+ 4.333

A 4.000

A- 3.667

B+ 3.333

B 3.000

B- 2.667

C+ 2.333

C 2.000

C- 1.667

D 1.000

F 0.000

P Not in GPA (Pass)

S Not in GPA (Satisfied)

IP In Progress: year long course, final grade assigned in succeeding term

CR Credit

**Fordham University School of Law**  
**150 West 62nd Street**  
**New York, NY 10023**

September 02, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I write to offer an enthusiastic recommendation for Jennifer Ferentz, Fordham Law School, Class of 2021, for a judicial clerkship. After law school, I had the honor to serve twice as a clerk and, based on that experience, I believe that Jennifer would make a real contribution to any chambers.

I have gotten to know Jennifer both as a researcher and writer as well as through conversations about her desire to pursue a career in public service. This past year, Jennifer approached me to supervise her note on the institutional structure of prison reform in New York City. Jennifer had worked as an advocate for the incarcerated in the city and learned firsthand the challenges of creating change—particularly around the use of force by corrections officers—in a fragmented system with few clear lines of accountability. In our discussions about her research, I encouraged her to think outside the traditional law journal format of a clearly defined doctrinal issue with a relatively cut-and-dried resolution, which is the format that third-year student editors tend to prefer when advising second year note writers. Instead, it was clear she needed to take a legal-institutional approach, which is challenging to do for most legal scholars, let alone for law students.

Jennifer, however, was quite determined and did a wonderfully thorough job of mapping the structures that reinforce our existing system and stand as barriers to reform. This required both engagement with legal sources, such as the New York City Charter and Code, as well as qualitative research with people involved in this vein of criminal justice in the city to round out how law in action squares (or not) with law on the books. In the end, Jennifer produced a fascinating review of the splintered oversight of the New York City jails, a system that involves multiple local parties and public bodies, as well as state and federal involvement. She used this mapping exercise to help explain the counter-intuitive puzzle of why use of force rates have climbed since a consent decree led to the imposition of a federal monitor over Rikers Island in 2015. She then offered reform proposals that moved beyond surface-level, simplistic responses to use-of-force problems, suggesting ways to strengthen accountability and move real change.

This kind of creative deployment of research skills to address deep-seated challenges reflects Jennifer's overall dedication to public service. In addition to the work she has done with the Legal Aid Society's Prisoners' Rights Project—the internship that led to her journal note—Jennifer has been deeply involved in voting rights, interning with the New York Civil Liberties Union Voting Rights Project. This again underscores her far-sighted dedication to addressing systemic challenges and finding critical leverage points to deploy her insights.

In short, I am delighted to offer an enthusiastic recommendation for Jennifer. She is deeply dedicated to the public good at a moment when that could not be more important and brings creative thinking to her passion for service—as I would hope all my students would do! Please do not hesitate to contact me if you need any further information.

Sincerely,

Nestor M. Davidson  
Albert A. Walsh Chair in Real Estate,  
Land Use, and Property Law

Nestor Davidson - ndavidson@fordham.edu

**Fordham University School of Law**  
**150 West 62nd Street**  
**New York, NY 10023**

September 02, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

My student Jennifer Ferentz is applying for a clerk's position in your chambers. I write to recommend her enthusiastically to you. She has both the smarts and the professional skills that will make her a superlative judicial clerk.

When I asked Jennifer to describe herself academically, she said she was an "ambitious learner." This seems to me exactly right. I met Jenny when she enrolled in my Administrative Law course in Fall 2019. At Fordham, all first-year students must enroll in a class on Legislation and Regulation. Therefore, only upper class students interested in the subject and invested in challenging themselves enroll in Administrative Law. But Jenny was unusually invested. She was the student who came to me most consistently with questions and observations that tied together disparate parts of the class. She was the student who was unembarrassed to say that she did not fully understand something, so that she could be sure to master it. She was the student who wondered in week 10 of the course how a case we had just read related to issues we had discussed in week 2.

Perhaps most strikingly, Jenny came to my office a few weeks in the Spring term, wanting to discuss various ways in which her new Spring coursework related to themes we had discussed in my class. For that conversation, Jenny had no incentive beyond her determination to advance, at every turn, her understanding of the law. And she was insightful and sharp about the ways that our Administrative Law materials about regulation generally were related to particular problems being discussed in her Spring courses about voting rights, information privacy, and professional responsibility. I left our talk with a lot to think about.

I require all of my students in Administrative Law to write a paper analyzing some difficult topic raised by the course materials. I set several paper topics over the course of the semester, and allow students to choose among them. Jenny chose to write about how one should best advise a government client pursuant to the Government in the Sunshine Act (GITSA). I was not surprised that Jennifer had gravitated away from some of the more theoretical paper topics towards a practical one. And her paper was excellent. I wrote on the top of her paper to Jenny that she was "clever, lawyerly, and self-aware in the advice you give." Her analysis of GITSA was superlative, and noted several intricacies of the statute that many students (and lawyers) might have missed. She also did a great job in recognizing that advice to an agency client must accord with the law but also be responsive to the client's political posture, policy goals, and ethical obligations. And she did all of this within a strict word limit.

Given the quality of her written work for me, I was prepared to be impressed by Jenny's Note for the Fordham Urban Law Journal. I was not disappointed. Jenny first encountered some of the problems associated with American jails when working for AmeriCorps in the year after she was graduated from college. I know that this experience helped motivate Jenny to enter the legal profession, and was not surprised that she chose jails as the subject of her Note. What is special about the Note is that Jenny writes throughout with evident passion and, at the same time, lawyerly precision. It is no small thing at once to remain passionate and think dispassionately. For this reason, I expect the Note to be influential. I was also particularly pleased, in my role as one of the faculty advisors to the Urban Law Journal, that Jenny was named a Notes and Articles editor for the 2020 editorial board. I hope that in that role Jenny can help other students aim towards the synthesis she has achieved.

Finally, I cannot over-emphasize Jenny's personal way of being in student communities of which she is a part, be it in the classroom, at the Journal, in Fordham's Stein Scholarship program for public-interest lawyering, or at the School in general. Brilliant when she speaks in class, she also listens carefully to her colleagues and builds on their ideas. She wants to organize groups to be better at least as much as she is anxious to find a place for her own voice within them. And she is consistently warm, friendly, congenial, and looking to help the people around her. These personal characteristics, in addition to her intelligence, writing ability, and work ethic, make her an extraordinary person to be around. They make her stand out as a student, and they will likewise make her stand out as a colleague, and, I hope, as a judicial clerk.

In short, I give Jenny my highest recommendation. I hope very much that you will be able to offer her a position. If you need any more information about Jenny, please do not hesitate to contact me at the email address listed above.  
Sincerely,

Aaron Saiger - [ASAIGER@law.fordham.edu](mailto:ASAIGER@law.fordham.edu) - (212) 636-7736

Aaron Saiger  
Professor of Law

Aaron Saiger - [ASAIGER@law.fordham.edu](mailto:ASAIGER@law.fordham.edu) - (212) 636-7736



## JENNIFER PIA FERENTZ

560 W. 151st Street #B2, New York, NY 10031  
jferentz@law.fordham.edu | (917) 699-7171

### WRITING SAMPLE

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The attached writing sample is a legal memorandum I submitted to the Legal Unit, which works under the General Counsel of the New York City Campaign Finance Board (CFB), during my 2020 summer internship. It is unedited and original. I am submitting it with the express approval of my supervisor.

This memorandum serves to summarize the case law applicable to CFB regulations that create requirements for candidates to appear in municipal debates. The CFB has been a party to at least two lawsuits challenging the legality of these requirements, and this memorandum is to remain on file if the issue is to arise again. Further, several attorneys in the Legal Unit aim to publish a piece of writing about debate requirements for public matching funds programs administered at the state or local level more generally, and this memorandum also supports that project.

**MEMORANDUM**

To: Legal Unit

From: Jennifer Ferentz

Date: August 7, 2020

Re: Case law in support of eligibility criteria for candidate debates

**STATEMENT OF PURPOSE**

The purpose of this memorandum is to describe the case law supporting the legality of New York City Campaign Finance Board (CFB) regulations that lay out candidate debate eligibility criteria.

**BACKGROUND**

As a requirement of CFB's Matching Funds Program, a candidate must participate in one or both of two pre-election municipal debates.<sup>1</sup> Section 3-709.5(5)(b)(i) of the New York City Administrative Code ("Admin. Code") provides that the CFB and the designated sponsor<sup>2</sup> of these debates may impose "non-partisan, objective, and non-discriminatory [eligibility] criteria" for participation. In addition, to be eligible for the first debate, a candidate must have raised and spent an amount equal to 2.5% of the expenditure limit designated for the particular office he or she is competing for.<sup>3</sup> For the second debate, only "leading contenders" can participate; the

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<sup>1</sup> See N.Y.C. ADMIN. CODE § 3-709.5(1)(a) ("any participating candidate and any limited participating candidate for nomination or election to a city-wide office shall participate in either of the two pre-election debates, or both, held...for which he or she is eligible").

<sup>2</sup> In order to be eligible, designated sponsors must be "organizations which are not affiliated with any political party or with any holder of or candidate for public office, which have not endorsed any candidate in the pending primary, special, general, or run-off election for the city-wide office," and are chosen after making application to the CFB. See N.Y.C. ADMIN. CODE § 3-709.5(4)–(5)

<sup>3</sup> For information about expenditure limits for each citywide office eligible for public funds, see Limits & Thresholds, Spending Limits, NEW YORK CITY CAMPAIGN FINANCE BOARD, <https://www.nyccfb.info/candidate-services/limits-thresholds/2021/>.

eligibility requirements for this debate are determined “on the basis of additional non-partisan, objective, and non-discriminatory criteria set forth in any agreement between the [debate] sponsor and [the CFB].”<sup>4</sup> These criteria usually consist of a higher financial threshold than for the first debate, certain polling numbers, and levels of media coverage.

## DISCUSSION

The controlling Supreme Court case regarding the ability for the government to exclude candidates from debates is *Arkansas Education Television Commission v. Forbes*.<sup>5</sup> In *Forbes*, the Court held that a public broadcaster’s decision to exclude a Congressional candidate from a televised debate was not violative of the First Amendment because the decision was “a reasonable, viewpoint-neutral exercise of journalistic discretion.”<sup>6</sup> To reach this holding, the Court performed an analysis under the forum doctrine, as the Court was asked to consider whether Plaintiff-candidate Forbes had a right to access a government-created space.<sup>7</sup> As explained in *Perry Education Association v. Perry Local Educators’ Association*, under the forum doctrine, a court must first look at the “character of the property” at issue to determine

<sup>4</sup> N.Y.C. ADMIN. CODE § 3-709.5(5)(b)(i).

<sup>5</sup> 523 U.S. 666 (1998).

<sup>6</sup> *Id.* at 683.

<sup>7</sup> *Id.* at 675. Although the Supreme Court in *Forbes* decided to apply a forum analysis, the Court often engages in a different analysis under the First Amendment with regards to government regulation of *types* of speech. Under this alternative analysis, as laid out in *Turner Broadcasting Sys., Inc. v. F.C.C.*, a court must first determine whether a government regulation of speech is content-based or content-neutral to decide what level of scrutiny to apply. 512 U.S. 622, 637 (1994). Content-based regulations are ones that “by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed,” whereas content-neutral regulations are those “that confer benefits or impose burdens on speech without reference to the ideas or views expressed.” *Id.* at 643. Courts apply strict scrutiny, or “the most exacting scrutiny,” to content-based regulations, and an “intermediate level of scrutiny” to content-neutral regulations. *Id.* at 642. While the Court acknowledges that determining whether a regulation is content-based or content-neutral hinges on distilling its “purpose...or justification” that is “often...evident on its face,” the Court also notes that it is not always so obvious which category the regulation falls into. *Id.* at 642–43.

whether “a right of access to [that] property” exists; only then can it apply the correct standard of scrutiny.<sup>8</sup> The Supreme Court has articulated three general categories, or types, of property under this doctrine: public forums, designated public forums, and nonpublic forums.<sup>9</sup> Strict scrutiny applies to any government regulation of either public forums or designated public forums.<sup>10</sup> Therefore, for the state to properly exclude content-based speech from these two types of forums, any “time, place, or manner of expression” restriction must be “content-neutral” and “narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”<sup>11</sup> In contrast, it is easier for the state to properly restrict speech from a nonpublic forum: the regulation need only be “reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view,” or in other words, viewpoint-neutral.<sup>12</sup>

In *Forbes*, the Court ultimately determined that the Congressional debate was a nonpublic forum. The Court applied a forum analysis only after distinguishing candidate debates from “public broadcasting as a general matter,” which is not usually subject to a forum analysis.<sup>13</sup> After briefly dismissing the possibility that the debate could be considered a public forum,<sup>14</sup> the Court then reasoned that the debate could not be a designated public forum, because

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<sup>8</sup> 460 U.S. 37, 44 (1983).

<sup>9</sup> *Id.* at 45–46.

<sup>10</sup> *Id.* at 45.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 46.

<sup>13</sup> *Arkansas Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 675 (1998). The Court distinguished candidate debates from general public broadcasting for two reasons: (1) that a debate is “by design a forum for political speech by the candidates” as opposed to a political talk show where a commentator expresses his or her own personal views; and (2) the “exceptional significance” of candidates with regards to “the electoral process.” *Id.*

<sup>14</sup> *Id.* at 678 (stating that the “status” of a traditional public forum does not “[extend] beyond its historic confines”).

such a finding would require that the state-owned broadcast station intended “to make [the debate] ‘generally available’ ...to a class of speakers.”<sup>15</sup> Therefore, as the station had “reserved eligibility for participation in the debate to candidates” for a Congressional seat<sup>16</sup> — with no open-microphone made available for general use,<sup>17</sup> for example — the state had created a nonpublic forum for a particular purpose.

The Court then concluded that, because the debate was a nonpublic forum, the public broadcaster had the right to exclude the Plaintiff-candidate Forbes. The public station’s reasons for excluding Forbes were that “he had generated no appreciable public interest,”<sup>18</sup> had “little financial support,” and that neither voters nor the media considered him to be a “serious candidate.”<sup>19</sup> Thus, the Court confirmed that his exclusion was “not...based on [Forbes’] viewpoint and...reasonable in light of the purpose” of the debate, and was therefore permissible under the First Amendment.<sup>20</sup>

The Second Circuit has not issued a decision regarding candidate debates under *Forbes*. However, on the District level, the Southern District of New York held in *Piccolo v. New York City Campaign Finance Board* that CFB regulations that exclude candidates from municipal debates by “measuring popular support by polls and financial contributions are acceptable forms of viewpoint-neutral and reasonable debate-eligibility criteria.”<sup>21</sup> The Court recognized that its

<sup>15</sup> *Id.* at 678 (quoting *Widmar v. Vincent*, 454 U.S. 263, 264 (1981)).

<sup>16</sup> *See id.* at 680.

<sup>17</sup> *See id.*

<sup>18</sup> *Id.* at 682.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* (citing *Cornelius v. NAACP Legal Defense Fund*, 473 U.S. 788, 800 (1985)).

<sup>21</sup> *Piccolo v. New York City Campaign Finance Bd.*, 2007 WL 2844939, \*20–21 (S.D.N.Y. 2007).

analysis was necessarily “controlled by *Forbes*,”<sup>22</sup> likening the criteria in New York City regulations to the dispositive facts in *Forbes*.<sup>23</sup>

More recently, in a facial challenge to both the debate eligibility criteria laid out in § 3-709.5 of the Admin. Code and 2017 Debate Rules, which led to the exclusion of Plaintiff-candidate Sal Albanese from the second, or “leading contenders,” mayoral debate in November of 2017, the Eastern District of New York validated the constitutionality of CFB eligibility criteria. The Court recognized that there was “no evidence to suggest that the...[r]ules,” or debate eligibility criteria “[were] partisan, subjective, or discriminatory.”<sup>24</sup> The 2017 Debate Rules specified that each participant in the “leading contenders” debate must have either (1) raised or spent \$1,000,000 or (2) have raised and spent 2.5% of the expenditure limit and have reached at least 15% in a qualified poll.<sup>25</sup> In dismissing the Plaintiff’s complaint, the Court noted that “financial criteria may be a logical measure of a candidate’s strength,” and that there is a “genuine public interest in limiting debates to candidates perceived as viable.”<sup>26</sup> Thus, it is most likely that a challenge to CFB rules regarding debate eligibility criteria, if ever to reach the Second Circuit, would be unsuccessful if a candidate need only raise and spend a small percentage of the applicable expenditure limit and reach a modest outcome in polling numbers.

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<sup>22</sup> *Id.* at \*20.

<sup>23</sup> *Id.* (underlining the Supreme Court’s notice of candidate Forbes’ lack of popular support, lack of financial support, and lack of perceived seriousness by the public and news media).

<sup>24</sup> *Albanese, et al. v. New York City Campaign Finance Bd., et al.*, No. 158731-17, N.Y. slip. op. 90213(U) (N.Y. App. Div. Oct. 19, 2017).

<sup>25</sup> See Memorandum of Law in Opposition to Plaintiff’s Motion for Preliminary Injunctive Relief and in Support of Their Cross-Motion to Dismiss the Complaint at 7, *Albanese, et al. v. New York City Campaign Finance Board, et al.* (Oct. 29, 2017) (No. 17-CV-6254 (RJD)).

<sup>26</sup> See *Albanese, et al.*, No. 158731-17.

## Applicant Details

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 Middle Initial **H**  
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Address

|   |
|---|
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|---|

Contact Phone Number **9199952946**

## Applicant Education

BA/BS From **North Carolina State University**  
 Date of BA/BS **May 2014**  
 JD/LLB From **Campbell University School of Law**  
[http://www.nalplawsonline.org/ndlsdir\\_search\\_results.asp?lscd=53401&yr=2011](http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=53401&yr=2011)  
 Date of JD/LLB **May 10, 2021**  
 Class Rank **5%**  
 Law Review/Journal **Yes**  
 Journal(s) **Campbell Law Review**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **Campbell Law's Old Kivett Moot Court Competition**

## Bar Admission

**Prior Judicial Experience**

|                                  |     |
|----------------------------------|-----|
| Judicial Internships/Externships | Yes |
| Post-graduate Judicial Law Clerk | No  |

**Specialized Work Experience**

**Recommenders**

Bolitho, Zachary  
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Kent, Michael  
mkent@campbell.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**



# James “Trey” Ferguson

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The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

Three years ago, I left teaching high school math to pursue a career that was simultaneously intellectually challenging and beneficial to my community. That desire to serve the public is what now leads me to apply for a 2021-2023 term clerkship in your chambers. I am interested in clerking for you because magistrate judges hear a diverse set of legal issues, which I believe will compliment my legal education and will make me a better lawyer.

I first became interested in clerking while interning for Judge Inman on the North Carolina Court of Appeals last fall. That interest has only grown since I began externing with Judge Bell, U.S. District Court Judge for the Western District of N.C., this fall. In those experiences, I have found a passion in legal research and writing, which has ultimately led to me becoming a teaching scholar for the law school’s first-year Legal Writing course and Editor-in-Chief of the *Campbell Law Review*.

While in law school, I have completed course work in civil procedure, evidence, constitutional law, criminal procedure, and employment discrimination. Currently, I am taking a course in Constitutional Litigation, a survey of Section 1983 claims, which I find extremely fascinating. My internship experiences, combined with my studies, have sparked my desire to learn more about these various areas of the law through a judicial clerkship, and I believe they are experiences that have prepared me to competently contribute to your chambers.

Enclosed is a copy of my resume, my law school transcript, and a writing sample from my Advanced Legal Writing course. I have also enclosed, with permission, a redacted bench memo I prepared for Judge Inman during my fall internship. Thank you for considering my application.

Respectfully,

James “Trey” Ferguson

# James “Trey” Ferguson

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## EDUCATION

### CAMPBELL UNIVERSITY SCHOOL OF LAW

Raleigh, N.C.

Juris Doctor Candidate

May 2021

GPA: 93/100 Class Rank: 8/166 (Top 5%)

Honors: Janette Soles Nelson Public Service Scholar (Full Tuition, Merit Scholarship), Wake County Bar Association Scholarship (2019), Book Awards in Legal Research & Writing I and Property II

Activities: Law Review Editor-in-Chief (2020-21) & Member (2019-20), Legal Research & Writing Teaching Scholar, Old Kivett Moot Court Competition, Research Assistant for Former Justice W.P. Whichard

### NORTH CAROLINA STATE UNIVERSITY

Raleigh, N.C.

Bachelor of Science in Secondary Mathematics Education, Minor in History

May 2014

Licensure Areas: Middle Grades Math, High School Math, High School Social Studies

Honors: N.C. Teaching Fellow, College of Education Spirit Award, Teaching Math Excellence Award

## LEGAL PRACTICE EXPERIENCE

### U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF N.C.

Charlotte, N.C.

The Honorable Judge Kenneth Bell’s Chambers, *Judicial Extern*

August 2020 – Current

### ODIN LAW & MEDIA

Raleigh, N.C.

*Law Clerk*

December 2019 – Current

- Research topics in the areas of employment, antitrust, and intellectual property law.
- Write and publish blog posts about legal topics related to clients’ businesses.
- Draft licensing agreements and other business contracts, as needed.

### LEGAL AID OF N.C.

Raleigh, N.C.

*Dr. Martin Luther King Jr. Summer Law Clerk Program*

May 2020 – July 2020

- Counsel and represent clients, under the N.C. Law Student Practice Rule, in the areas of Housing (Foreclosure & Eviction Defense), Consumer Bankruptcy, and Benefits (Social Security Disability & Unemployment).

### N.C. COURT OF APPEALS

Raleigh, N.C.

The Honorable Judge Lucy Inman’s Chambers, *Judicial Intern*

August 2019 – November 2019

### N.C. GENERAL ASSEMBLY

Raleigh, N.C.

Bill Drafting Division, *Summer Law Clerk*

May 2019 – August 2019

- Research, draft, and edit bills and statements for elected members and staff attorneys.
- Track, record, and report changes to the special provisions of the state budget.

## OTHER EMPLOYMENT EXPERIENCE & COMMUNITY INVOLVEMENT

### DURHAM HIGHWAY FIRE DEPARTMENT

May 2019 - Current

*Office Manager*

### LEESVILLE ROAD HIGH SCHOOL, Wake County Public School System

Raleigh, N.C.

*Math Teacher, Student Council Advisor*

August 2014 – June 2018

### STATE EMPLOYEES CREDIT UNION

September 2017 - Current

*Branch Advisory Board Member & District Loan Review Committee Member*

## PUBLICATIONS

*Protecting Personal Data: A Survey of Consumer Protections Throughout North Carolina’s Identity Theft Protection Act*, 42 CAMPBELL L. REV. 191 (2020).

*After-Acquired Evidence Could Limit State Employees’ Relief in Contested Cases*, NCBARBLOG.COM (Apr. 6, 2020), <https://ncbarblog.com/after-acquired-evidence-could-limit-state-employees-relief-in-contested-cases/>.

**James Ferguson**  
**Campbell University School of Law**  
**Cumulative GPA: 93.049**

**Fall 2018**

| COURSE                     | INSTRUCTOR      | GRADE | CREDIT UNITS | COMMENTS                |
|----------------------------|-----------------|-------|--------------|-------------------------|
| Civil Procedure I          | Matthew Sawchak | 96    | 2            |                         |
| Contracts I                | Scott Pryor     | 87    | 3            |                         |
| Criminal Law               | Zachary Bolitho | 96    | 3            |                         |
| Legal Research & Writing I | Susan Thrower   | 93    | 2            | Received the Book Award |
| Property I                 | Michael Kent    | 95    | 2            |                         |
| Torts I                    | Lisa Lukasik    | 91    | 3            |                         |

Academic Honors List

**Spring 2019**

| COURSE                      | INSTRUCTOR         | GRADE | CREDIT UNITS | COMMENTS                |
|-----------------------------|--------------------|-------|--------------|-------------------------|
| Civil Procedure II          | Christopher Ogolla | 90    | 2            |                         |
| Constitutional Law I        | Richard Bowser     | 88    | 3            |                         |
| Contracts II                | Lucas Osborn       | 90    | 2            |                         |
| Legal Research & Writing II | Susan Thrower      | 94    | 3            |                         |
| Property II                 | Michael Kent       | 100   | 3            | Received the Book Award |
| Torts II                    | Lisa Lukasik       | 88    | 2            |                         |

Academic Honors List

**Fall 2019**

| COURSE                     | INSTRUCTOR          | GRADE | CREDIT UNITS | COMMENTS   |
|----------------------------|---------------------|-------|--------------|--|
| Advanced Legal Writing     | Elizabeth Berenguer | 97    | 3            |  |
| Appellate Brief Writing    | Matthew Sawchak     | H     | 1            | High Honors  |
| Bankruptcy                 | Pamela McAfee       | 91    | 2            |  |
| Constitutional Law II      | Michael Kent        | 94    | 3            |  |
| Externship I - Summer 2019 |                     | S     | 1            | NC General Assembly's Bill Drafting Division           |
| Externship II - Fall 2019  |                     | S     | 1            | Judge Lucy Inman's Chambers at the NC Court of Appeals |
| Law Review                 |                     | S     | 1            |  |
| Wills & Trusts             | Richard Bowser      | 96    | 3            |  |

Academic Honors List

**Spring 2020**

| COURSE                             | INSTRUCTOR         | GRADE | CREDIT UNITS | COMMENTS |
|------------------------------------|--------------------|-------|--------------|----------|
| Bankruptcy Reorganizations Seminar | Judge David Warren | 92    | 2            |          |
| Business Organizations             | Kevin Lee          | S     | 3            |          |
| Criminal Procedure                 | Anthony Ghiotto    | 99    | 3            |          |
| Employment Discrimination          | Melissa Essary     | 92    | 3            |          |

|   |                   |    |   |             |
|---|-------------------|----|---|-------------|
| Evidence  | Daniel Tilly      | 90 | 3 |             |
| Independent Study - History of the NC Supreme Court | Dean Rich Leonard | H  | 1 | High Honors |
| Law Review  |                   | S  | 1 |             |
| Non-Profit Organizations                            | Richard Bowser    | 93 | 2 |             |

#### Academic Honors List

#### Grading System Description

##### Numeric Grading Description

93 to 100: Demonstrates a superior level of competence.

84 to 92: Demonstrates an above average level of competence.

75 to 83: Demonstrates the level of competence expected within the profession.

65 to 74: Demonstrates an unsatisfactory level of performance but sufficient potential to provide a foundation for competence.

55 to 64: Requires repetition of the course for receipt of academic credit.

##### Descriptive Grading Descriptions

Honors (H): Demonstrates a superior level of competence and distinctively superior level of achievement.

Satisfactory (S): Demonstrates a good to an above-average level of competence.

Unsatisfactory/Passing: Demonstrates an unsatisfactory level of performance in the course, but demonstrates sufficient potential to provide a foundation for competence. Academic credit is awarded for the course.

Unsatisfactory/Failing: Demonstrates an unsatisfactory level of performance in the course and requires repetition of the course for receipt of academic credit.